











(Testimony of Robert Mondavi.)

Q. And how long have you been in that business?

A. Since 1937, in the wine business, but not always as Charles Krug Winery.

Q. Yes. And are you the present manager of the business?      A. Yes, I am.

Q. How long have you been manager?

A. Since it was founded in 1943, since we purchased the Charles Krug Winery there.

Q. When was it purchased in 1943?

A. That was in March of '43.

Q. Are you—were you in 1943 familiar with general business conditions in the wine industry?

A. Yes, I was.

Q. And were you also familiar with the pricing situation?      A. Yes. [277]

Q. The OPA rules and regulations with respect to pricing of wine?      A. That's right.

Q. I mean in a general way.

A. In a general way. I don't know in detail, I will put it that way.

Q. Were you then, and are you know, familiar with the marketing practices in the years 1943 and 1944?      A. That's right, yes.

Q. In the wine business?

A. That is on table wines, especially.

Q. Yes, and bearing in mind those conditions, do you know what the value of table wines was in December of 1943?

Mr. Brookes: Your Honor, I object to the qualification of this witness to answer such questions of

(Testimony of Robert Mondavi.)

such a general sort. I am satisfied that this witness has been established as a man who knows something about the wine industry, but as a man who has had experience in it in the St. Helena region, he so testified, for several years. I understand that wine conditions differ in different parts of the state. I haven't heard that the witness has had any wine experience in other parts of the state, that he would know anything about the wine conditions and wine prices prevailing in different parts of the state.

Mr. Marcussen: I will ask him further questions, if your Honor please, in view of Counsel's objection. [278]

Q. (By Mr. Marcussen): Where is St. Helena?

A. In Napa County.

Q. Do you know where Forestville is?

A. That's right, yes.

Q. What county is that? A. Sonoma.

Q. How far apart are they?

A. Actual mileage, I don't know exactly, to be frank with you?

Q. Are the counties adjacent?

A. That's right.

Q. And approximately how far is St. Helena from Forestville?

A. I mentioned I wasn't quite certain, but I guess it would be in the neighborhood of, oh, 40 miles, I am not certain of the mileage.

Q. Are grapes grown and wine produced in both of those counties? A. That's right.

Q. And in any other counties around and adja-

(Testimony of Robert Mondavi.)

cent to those two counties? Yes, that's right.

Q. What other counties?

A. Mendocino County and Lake County, the Northern Coast Counties there. [279]

Q. Are all those counties known collectively—are those known collectively by a particular name in that region?

A. Northern Coast Counties; the fact is, there is thirteen of them. I can't mention them all, but there are thirteen North Coast County wineries.

Q. And to whom do the wineries in the North Coast Counties generally sell their products?

A. They sell the products, well, to either interwinery sales or to wholesalers in the East, or either they retail them direct from their premises to people.

Q. Now, I want to ask a question. I want you to simply answer that question without going any further. I want to ask you, do you know what the value of wine was in December of 1943, dry wines, I just want to ask you if you know.

A. Yes.

Q. You do know? A. Yes.

Q. I would like to have you state to the Court what that value is.

A. Well, that value varied, that is from 75 cents to about \$1.00 a gallon, depending on the wine itself, and the people that were doing business with one another, the quality.

Q. When you said "depending on the wine itself", are you referring to the quality?

(Testimony of Robert Mondavi.)

A. That's right, yes. [280]

Q. Are you familiar with the fact that—well, will you state what the—do you know what the OPA flat ceilings were for table wines at that time?

A. What time do you mean, what are you referring to?

Q. In December of 1943.

A. The OPA ceilings were 28 cents for dry red and 33 for dry white wines.

Q. Yes. Now, can you explain to the Court the basis of your evaluation of 75c to \$1.00 a gallon for dry wines in December of 1943, with particular reference to the fact that the OPA ceiling prices were nevertheless 28 cents and 33 cents, respectively, for red and white wines?

A. Well, at that time there seemed to have been a shortage of wine and wine was selling in glass—

Q. By "in glass" do you mean case goods?

A. In case goods, yes. That would reflect a price back to the winery of about a price of 75 to a dollar, depending on the deal made.

Q. Yes. And what was, what type of transaction would the winery—well, could a winery actually enter to—did the wineries actually enter into transactions which would net them those prices?

A. Yes, that's right, that's right.

Q. Will you describe the type of transaction or transactions you may have in mind? [281]

A. Well, the transaction was called the contract bottling arrangements that were made with wholesales in the East. It's a bottling arrangement

(Testimony of Robert Mondavi.)

made with the wholesaler in the East and whereby the winery in California shipped wine on consignment to themselves, consigned to themselves in the East, I mean the wholesaler in the East bottled the wine for the account of the winery and then the winery sold the case goods to the wholesaler in the East. In other words, that was a vehicle that was used to circumvent the price, 28 and 33 cents, to circumvent OPA prices.

Q. You said circumvent?

A. By that I meant a legal method of getting a higher price than the 28 and 33 cent price.

Q. Do you know whether the OPA during 1943 or '44 ever issued any rule and interpretation, regulation, condemning that practice in those years?

A. No, I don't. In fact, we received—no.

Q. Now, I wanted to ask you, was that method of selling wine generally known in the North wine country, North Wine Counties that you—how did you describe them?

A. North Coast Counties.

Q. North Coast Counties?

A. Yes, it was discussed quite frequently, yes.

Q. Among the various vintners?

A. That's right. Vintners would discuss it, they would [282] discuss it with the various vintners because they had a problem before them, and that was the means of trying to get a price above the OPA ceiling, and that was one of the methods discussed.

Q. Yes. Now, did C. Mondavi & Sons ever use



(Testimony of Robert Mondavi.)

that method of marketing wine?           A. Yes.

Q. When did you begin to do that?

A. In October of 1943.

Q. And on the basis of those transactions, what price for the wine was reflected to C. Mondavi & Sons?

A. About 85 cents a gallon.

Q. Was there any other method that you know of whereby wineries received a higher price for their wine than the OPA price ceilings would allow in sales of bulk wine alone?

A. Well, winery and wine itself was sold together, and in that way they would achieve a price for their wines.

Q. Do you know whether or not in 1942 and 1943 there were—the extent to which wine was—wine and wineries were sold together?

A. Well, I don't know. No, I don't know.

Mr. Brookes: I object to the question. The man has not been established as an expert in the value of real estate. Assuming that his qualifications as an expert on the value of wine have been established, wine is liquid and real estate is highly unliquid, and I do not see that his qualifications [283] entitle him to express any opinion whatsoever on the value of wineries, and, in essence, that is what he is doing.

The Court: He is asking if he knows of any sales of wineries and wines in one transaction?

Mr. Marcussen: That is correct, your Honor.

The Court: I will allow that.

(Testimony of Robert Mondavi.)

The Witness: I knew of sales going on, but I can't recall the names.

Q. (By Mr. Marcussen): I am not asking you for specific sales, Mr. Mondavi, but do you know whether there were a number of such sales during that time?

A. That was the—yes, that is what I heard at that time. There were sales and discussions of sales going on, and sales that had taken place.

Mr. Brookes: Your Honor, I ask that that be stricken on the ground that on its face it is hearsay.

The Court: It is hearsay.

Q. (By Mr. Marcussen): Was it common knowledge at that time? A. Yes.

Q. Did C. Mondavi & Sons ever sell a winery together with its inventory of wine?

A. Yes, yes, that's right.

Q. When? [284]

A. That was in February of 1944, the original agreement made in December of 1943.

Q. And to whom did they make the sale?

A. The sale was made to the Tiara Products Company, Inc.

Q. Do you recall whether any agreement was entered into on December 17, 1943?

A. Yes, we made an agreement with John Dumbra, in writing on paper. [285]

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Q. (By Mr. Marcussen): Did you negotiate the sale that is described here in that memorandum?

(Testimony of Robert Mondavi.)

A. Yes, I did.

Q. Whom did you talk to?

A. John Dumbra.

Q. Do you recall what the date was when you talked to him?

A. What do you mean by that statement?

Q. Well——

A. I did talk to him on December 17, for sure, after the agreement that we made at this date.

Q. Did you talk to him prior to that time?

A. Several times before that, yes.

Q. Will you state what you said and what he said in the course of those conversations?

Mr. Brookes: Your Honor, I object to that on the ground that the matter that Counsel is preparing to go into is irrelevant. There is now in evidence a document purported to be an agreement. It is stipulated if the original is shown, it will then be in and then a document which is in agreement. The agreement speaks for itself. There is no necessity for contributing at any time or elaborating it. An agreement binding on both parties which speaks for itself.

Mr. Marcussen: If your Honor please, the materiality [287] of this document becomes clear when it is recalled that Mr. Particelli testified concerning a conversation he had with the same man for the sale of his winery, at approximately the same time. The evidence is offered for whatever value it has by way of impeachment of Mr. Particelli's testimony.



(Testimony of Robert Mondavi.)

Mr. Brookes: Your Honor, this is not a conversation, as I understand it, regarding the sale of the Particelli wine and the Particelli winery. This is a conversation regarding a sale which was made between someone represented by Mr. Mondavi and the Tiara Products Company. May I see the copy?

Mr. Marcussen: Certainly.

Mr. Brookes: This is a sale according to this of plant and wine for \$90,000. This is not a sale of wine for a certain figure and a plant for a certain figure. There is no allocation between them. Counsel stated that the Government was attacking the documents representing the constituting of the transaction on the part of Mr. Particelli's sale as being a sham. For that reason, the negotiations were relevant either on the part of the Government to show that it was a sham or on the part of the taxpayer to show that it was not. I do not understand that the Government is contending that this sale also is a sham, and if the Government is contending that the sale is a sham, I fail to see its relevance.

The Court: I don't think you can impeach Mr. Particelli by bringing in a conversation or statement which Mr. Dumbra made [288] in a conversation in another transaction to which Mr. Particelli had no connection, and did not participate.

Mr. Marcussen: Very well, your Honor, I will ask another question or two.

Q. (By Mr. Marcussen): Do you know whether Mr. Dumbra at the time was—do you know what

(Testimony of Robert Mondavi.)

his business was when he came to California in December of 1943, and what his purpose was?

A. When he first came to see me, he was interested in buying wine.

Mr. Brookes: I object, your Honor. The witness' knowledge of what Mr. Dumbra's purpose was could only have come from the lips of Mr. Dumbra himself, and it is therefore hearsay. Mr. Dumbra was subpoenaed as a witness and it is stipulated that we will take his deposition in New York.

The Court: Objection sustained.

Q. (By Mr. Marcussen): Were further documents executed after the execution of this—of the one represented by Exhibit U?

A. Yes, sir. The escrow agreements drawn up at the bank.

Q. Did those agreements also—did those agreements contain an allocation of the total purchase price between wine and winery?

A. Will you repeat that again? [289]

Mr. Marcussen: Will you read the question, Mr. Reporter?

(The question was read by the reporter.)

Mr. Brookes: Your Honor, may I inquire of Counsel whether the originals of those agreements have been destroyed?

Mr. Marcussen: The agreements I am not interrogating the witness about.

Mr. Brookes: Yes, I wonder why this violation of the best evidence rule.

Q. (By Mr. Marcussen): Do you have those?

(Testimony of Robert Mondavi.)

A. The originals of the escrow agreements?

Q. Do you have those with you?

A. No, they are at the bank.

Q. Do you have copies of them?

A. I have a copy of the escrow instructions.

Q. Now, referring to those copies, can you state whether or not there was a separate allocation for wine and a separate allocation—

Mr. Brookes: Your Honor—

Mr. Marcussen: May I finish the question?

Mr. Brookes: I am going to object first, and I think you may as well know.

Mr. Marcussen: I think you might as well know the question before you object. Mr. Reporter, will you read the [290] question as far as I had gone?

(The question was read by the reporter.)

Q. (By Mr. Marcussen): —for the winery, I asked you whether you knew?

Mr. Brookes: I object to the question—have you completed the question? It is what I understood it to be, Counsel.

Mr. Marcussen: I wanted it in the record.

Mr. Brookes: Your Honor, first, this is admitted to be a copy of a document which is in existence and, under the best evidence rule, the document itself should and can be produced. When that is done, if this is a copy, I will have no objection to the copy being substituted for the original, and then, when that is done, the document will speak for itself. It does not need any interpretation for the witness or any other witness.

(Testimony of Robert Mondavi.)

The Court: Objection well taken, sustained.

Mr. Marcussen: That is all.

### Cross Examination

Q. (By Mr. Brookes): Mr. Mondavi, is it?

A. Pronounced Mondavi.

Q. Mondavi. Has all of your wine experience been in the Napa Valley?      A. Yes. [291]

Q. Does not a mountain range separate the Napa Valley from the Sonoma County region?

A. True.

Q. What is its name?

A. That is called—wait a minute, I forget what the range itself is called. It's the Maycanas Mountain Range.

Q. What is the height of that range?

A. I am not certain.

Q. Do you know what the height of the range is at the point opposite St. Helena?

A. No, I don't.

Q. Do you regard it as a high mountain range?

A. Yes.

Q. I understood you to say that your winery at the present time is in St. Helena?

A. That's right.

Q. Does this range protect St. Helena from the prevailing westerly wind of California?

A. Getting rather technical there, I don't think I would be qualified to answer that.

Q. Is the top of those mountains often shrouded in fog and clouds?      A. At times, yes.

(Testimony of Robert Mondavi.)

Q. Have you been to the top of those mountains?

A. Not to the top of the mountain, no. [292]

Q. Are there not vineyard lands on the top?

A. Yes, on some of the tops, yes.

Q. You have not visited those?

A. Yes, I have visited those. I didn't know whether you meant all of the tops of the ranges. I have been to most of them, but not all of them.

Q. Based on your presence at certain of the vineyards on the top of this range, did you find that it was windy up there?

A. Occasionally, it's windy, yes.

Q. Is there not a prevailing wind up there?

A. There would be, naturally.

Q. From the west?

A. By and large, I would agree with that.

Q. Is there a prevailing westerly wind in St. Helena?

A. I think you are getting a little too technical on that.

Q. Do you live in St. Helena?

A. That's right.

Q. How long have you lived there?

A. Since 1937.

Q. Do you regard St. Helena as having a warm climate?

A. Not completely, no.

Q. Do you know what the range of temperatures in the summer would be there? [293]

A. Oh, it ranges from, in the summer—

Mr. Marcussen: If your Honor please, Respondent objects on the ground of immateriality of all



(Testimony of Robert Mondavi.)

this. We are not concerned with the production of grapes, it seems to me. I don't know what Counsel is driving at.

Mr. Brookes: I will tell Counsel what I am driving at. Perhaps to him it sounds like I am going far afield. I have understood for many years that the Napa Valley, and St. Helena is near the north part of the Napa Valley, is considered one of the best regions in the state for growing wine; I understand it has its exponents who will assert it is the best region in the State of California for growing wine. It may be that this witness is one of them; I don't know. The temperature, both in evenness and what is—its extremes has nothing to do with, what?

Mr. Marcussen: Wine is produced?

Mr. Brookes: Growing the grapes and producing the wine, I understand it's called "growing wine." I believe that through this witness I will be able to show through this witness that climatic conditions are less favorable in Sonoma County.

The Court: It has to do with the quality of the grapes grown, is that the idea? Objection overruled.

Q. (By Mr. Brookes): I asked you, Mr. Mondavi, if you knew what the temperature range is in the upper Napa Valley, where St. Helena is, in [294] the summer.

A. It ranges from about, oh, at certain times of the year as high as 101 or 102, or 103, for a short period of time, three or four days, and then

(Testimony of Robert Mondavi.)

it would be, in the evening it cools off very rapidly, gets around 50 and sometimes colder in the summertime.

Q. And what is the range, average normal range of temperature during the wintertime?

A. Wintertime, from almost about freezing at times, and, oh, about 85 degrees, in that neighborhood. I am not quite certain of those temperatures. I am more acquainted with those during the summer. I watch them more.

Q. Does the Napa Valley have good conditions for growing grapes for the production of dry wines?

A. We think they are excellent.

Q. Do you think that there are any other conditions in the state more favorable for growing grapes, for growing grapes for dry wines, as favorable as in the Napa Valley?

A. We prefer Napa Valley.

Q. In fact, that is why you are there, isn't it?

A. That's right.

Q. Can you run off the names, or most of the names, of the grape producers of dry table wines in California? By that I mean the ones with the reputation for producing the finest dry table wines? [295]

A. Most of them, Beaulieu, Inglenook, Beringer Bros., Louis Martini, and there is Wente, Concannon, then there is Fountain Grove and Free-mark Abbey, Souverain. I would like to include Charles Krug.

Q. I think you may.

(Testimony of Robert Mondavi.)

A. I don't know, I think that is about it at the moment. I may have left out some others in Napa County, I am not certain.

Q. You left out some in Santa Clara County?

A. Almaden, and I mentioned Wentz and Concannon; gee, I don't know, that is about all I can remember at the moment here. Now, if you go over the list, I can probably add more to it.

Q. I will do that. You mentioned Beaulieu, Beringer Bros., Inglenook, and, of course, Charles Krug, Fountain Grove, Wentz, Concannon, and Almaden? A. Yes.

Q. Can you think of any others?

A. At the moment that is all I can think of.

Q. How many of those are in Napa Valley?

A. There is Beaulieu, Inglenook, Beringer Bros., Krug, Souverain, Louis Martini.

Q. Freemark Abbey?

A. Freemark Abbey; I guess that is about it.

Q. In 1942 and '43, would you have included Larkmead? [296] A. Yes.

Q. And that is located where?

A. In Napa Valley.

Q. How many of them are in Sonoma County?

A. Fountain Grove, that is about all I can recall at the moment.

Q. And the others are located where, in what counties?

A. At Livermore, Alameda County, and then there are others in—Almaden is in—

Q. Isn't it in Santa Clara County?



(Testimony of Robert Mondavi.)

A. Yes, Santa Clara County.

Q. Does a higher—do the wines produced by these wineries that you have named produce a higher average price than the normal average price for California dry wines?      A. You mean—

Mr. Marcussen: Are you talking about current wines, Counsel?

Mr. Brookes: If the condition today is different—

Mr. Marcussen: I don't mean presently current, but I mean current wine at the time you are interrogating the witness about, 1943. I take it you are talking about—

Mr. Brookes: I will ask, in 1943.

Q. (By Mr. Brookes): Did the wines produced by these vineyards or wineries that you have mentioned have a higher price than the price other [298] wineries or that the average wine could have commanded.

A. Do you mean if they sold it at this particular day or when it was fully matured?

Q. Are these wineries—is Beaulieu, as an example, in the habit of selling wine before it's wholly matured?      A. No.

Q. Is Inglenook?      A. No.

Q. Are any of these wineries you have mentioned, including the Charles Krug?

A. I would like to qualify those statements to say that they do not sell under their own bottled wines, I mean their own bottles, until the wine is fully matured, before they do sell wine, interwinery.

(Testimony of Robert Mondavi.)

That is, if they have certain lots that they want to sell, but that is not too great.

Q. Now, directing your attention to the wines sold under their own labels, in 1943, were the prices prevailing for those wines higher than the prices for the average dry wines?

A. Yes, under their own labels, yes.

Mr. Marcussen: Higher than what prices?

Mr. Brookes: Than the average prevailing price for dry wines is what I asked the witness.

Q. (By Mr. Brookes): What was the typical price prevailing for a high grade wine produced by one of these wineries in 1943? [299]

A. Well, in 1943?

Q. Yes.

A. Now, that is a question—that question is a rather difficult question to answer because that wine is not sold for a period of maybe four years hence, and so if I speak to you—I mean if I make any price quotation it will be—I will have to speak on a wine that we are selling five years hence that has been fully matured. In other words, they didn't sell, and I make this clear, they do not sell wines under their own bottle immediately after it is produced. They age over three years or more before putting it on the market, for mature wine.

Q. When you said "aged," do you mean aged in the barrel or aged in the bottle or do you include both periods?      A. I include both periods.

Q. And your answer as to the price commanded by such high type wines—

(Testimony of Robert Mondavi.)

A. Well, all right. That was fully matured and aged, I am qualifying the statement that way. They received—well, the prices varied in case goods. I am not certain I know their business, but it reflects our line of wine as comparable to theirs. There is that wine sold for about net to the winery, for about 5½ to 6 dollars a case, net to the winery.

Q. How many gallons in a case?

A. 2-4/10 gallon.

Mr. Marcussen: How many? [300]

The Witness: 2-4/10 gallons.

Q. (By Mr. Brookes): Now, Mr. Mondavi, will you answer the question with respect to the wines that were sold in 1943?

A. In respect to what?

Q. Fine table wines of the wineries you mentioned as being the fine wineries of California, their fine table wines sold in 1943.

A. At that time, I don't recall any fine wine sales; by fine wines—when you refer to fine wines I take it you are talking about Cabernet, Semillon, Savion Blanc, Riesling and other wines comparable to those?

Q. Those and others as well.

A. There are others, too.

Q. I am talking about wines of that sort.

A. At that time, I do not recall sales that took place inter-winery. They were holding those wines for their own bottling, and I can assure you that if there were any sales they would be quite high.

Q. Mr. Mondavi, in Sonoma County there are

(Testimony of Robert Mondavi.)

a lot of small wineries? A. Yes.

Q. What kind of wine do they produce?

A. They produce red table and white table wines.

Q. Do you consider that they produce wines of high quality? [301]

A. They produce very good wines over there.

Q. Are you speaking of finished wines?

A. Well, now, I am speaking of all wines, generally speaking. In other words, if it's competitive wine, they have a very good wine there, competitive wine, and if it's for aging like Fountain Grove, they have very good wine.

Q. If the wine has not been finished, do you regard that as a good wine? I am speaking of Sonoma County wines in particular.

A. Yes.

Q. Before it has been finished?

A. That's right. In other words—in other words, after all, your wine comes from the raw product itself, from the grape, and from there on in you need a good grape to make a good wine, and even though it's not finished it doesn't necessarily mean that the wine is not good. It's just not finished.

Q. Is it fit to drink before it's finished?

Mr. Marcussen: Counsel, I can't hear your questions.

Mr. Brookes: I asked him if it was fit to drink.

The Witness: Many times I would drink it.

Q. (By Mr. Brookes): Is there a market for it in the bottle before it is finished?

(Testimony of Robert Mondavi.)

A. Generally speaking, I would say no. [302]

Q. In 1943, what prices were you getting for the wines sold by you?      A. In 1943?

Q. Yes.

A. In the latter part of 1943, we were getting on a contract bottling arrangement—now, that is during October, November and December—we were getting about 85 cents a gallon for the wine, that is, return to us, by selling the case goods.

Q. How old was the wine?

A. The wine, some of that wine during November and December, actually contained some of the 1943 production.

Q. This is wine sold in December of 1943?

A. Now, I would like to explain our entire operation, and maybe I could clarify our operation to you, if you wish.

Q. Well, if it's necessary in order to answer my question.

A. Well, we have three types of wine, our fine wine, our Charles Krug brand; then we have our Napa Vista, our medium priced wine; and then we have our competitive wine which is the everyday table wine.

Q. How old is the Charles Krug wine when it's sold?

A. The Charles Krug wine is from three years to five years old before it's put on the market. The white wine, generally speaking, will be—I would say two years old. The [303] white wines will be from two years to three years old or older,



(Testimony of Robert Mondavi.)

and the red wines are at least four years old, at least four years before going on the market.

Q. Does it take longer properly to age a red wine than a white wine?      A. Yes.

Q. Is Zinfandel a red wine?      A. Yes.

Q. Do you bottle any Zinfandel?

A. Yes, I do.

Q. Do you bottle it under the Charles Krug label?

A. We bottle some under the Charles Krug label, yes.

Q. And what prices were you obtaining in 1943 for wine sold under the Charles Krug label?

A. We were selling in case goods at that time, and our price net was \$6 a case.

Q. When you say "in case goods" you mean in bottles?

A. Yes, in bottles, of fifths.

Q. And you said a case was 2.4 gallons?

A. That's right.

Q. At \$6 a case?      A. That's right.

Q. Now, your Napa Vista wines, how old were they on the average?

A. Well, now, I beg your pardon. At that time we were [304] not out with the Napa Vista line. All of our lines were to Charles Krug line.

Q. Then in 1943, you had no experience of your own with the cheaper wines?

A. Yes, then we had the C. K., and our competitive wines, the wines that we sold in gallon jugs, and also that we sold in bulk.

(Testimony of Robert Mondavi.)

Q. Was the C.K. a different wine than the one you call the competitive wine?

A. Well, the C.K. is our own bottling of competitive wines.

Q. And did you sell it differently, the competitive wine differently?

A. Yes, in other words by—let me place it this way. We had our C.K. price structure and then we had our regular contract bottling prices at that period of time. Now, we are speaking of 1943, the latter part of October, 1943?

Q. Yes.           A. Yes.

Q. How old was your competitive wine?

A. As I stated, our competitive wine in October, we were selling of 1943, we were selling 1942 vintage.

Q. How many months old was that?

A. That would be about a year old, twelve months, twelve, fifteen months. [305]

Then in November and December, the latter part, I would have to check my records on this to be exact, but the latter part of November, we started to blend the 1943 crush, and shipping some of that out, also with some of the 1942.

Q. In 1943, did you sell any of the 1943 crush, blended with other wines?

A. No, later on in the year, in 1943, you mean?

Q. Yes.

A. I am not certain of that. I would have to look up my records.

Q. Did you sell unfinished wine?

(Testimony of Robert Mondavi.)

A. No, we sold all finished wine.

Q. How long did it take you to finish your wine?

A. It takes about 30 days.

Q. By what process did you finish it?

A. We finish our wine by clarifying it, by chilling, chilling the wine, and filtering it.

Q. What were the prices at which you sold your competitive wine in 1943?

A. From October to the end of the year, we were selling our wines to return us through the contract bottling arrangement around 85 cents a gallon.

The Court: That was competitive wines?

The Witness: Yes. [306]

Q. (By Mr. Brookes): How old were those wines?

A. As I say, they were a blend, depending on when they were shipped, as I brought out. If they were in October, they were all of the 1942 vintage, but later on in the year, I mean, we began to blend with some '42 with some of the '43, and that is your picture there.

Q. Did this price include the tax?

A. The 85 cents return, no, that was net to us.

Q. Did that include freight?

A. No, this didn't include freight.

Q. Was that at the winery or in New York?

A. That was net to us at the winery. In other words, we charged a certain bottling charge. That is, the wholesaler was charged, I mean charged us, for the bottling. We in turn sold the finished



(Testimony of Robert Mondavi.)

or the bottled merchandise to the wholesaler. The difference between the bottling cost and what we charged them, deducting taxes and all, came to about 85 cents a gallon, 84, 85 cents a gallon.

Q. These were sales in gallon lots?

A. These were sales in gallons, half-gallons and fifths.

Q. Were there any sales in bulk of your wine?

A. From October on we made contract bottling arrangements.

Q. Did you have sales in bulk before that?

A. We had sales in bulk before that, yes. [307]

Q. What prices did you obtain for sales in bulk?

A. At what time?

Q. When you made them?

A. What do you mean?

Q. You said you stopped making them in October of 1943?

A. That's right. Well, before that—prior to that time you are speaking?

Q. Yes.

A. We made sales at 50 cents a gallon prior to that time in bulk, and even before that time. Now, are you referring further back to—I mean to the first of 1943?

Q. In 1943.

A. We made some sales at 35 cents a gallon at the beginning of 1943. We made sales at 35 cents a gallon.

Q. And in 1942, what price?

A. I am not quite so certain about the price

(Testimony of Robert Mondavi.)

in 1942, what the prices were on that. I would like to refresh my memory on that to be sure.

Q. Did I understand you to say that you stopped making sales in bulk because it ceased to be profitable?  
A. That's right, in October, yes.

Q. What was the ceiling price for your wine of the competitive brand in 1943, do you remember?

A. In 1943, of October, it came—the new ceiling price was 28 cents on red wine and 33 on white wine. [308]

Q. And that governed your wine as well as other wine?

A. Yes, that governed the competitive wine.

Q. The competitive wine, would it be governed, the Charles Krug wine?

A. No, because we had a previous price change on that.

Q. Had you had New York connections prior to the time that you began this contract bottling?

A. Yes.

Q. Were your connections with the same people that did your bottling under the contract bottling?

A. Yes.

Q. Had they handled your wines before?

A. Yes, they had.

Q. Had you sold to them in bulk?

A. Yes, we did.

Q. Had they handled your bottled goods as well before October, 1943?

A. Not before October, 1943, no.

Q. They handled only your bulk?

(Testimony of Robert Mondavi.)

A. The bulk, yes, outside of one distributor. I will qualify that, outside of one distributor that handled our case goods.

Q. When they got your wine in bulk, did they bottle it and sell it or did they sell it in turn in bulk? A. What was that again? [309]

Q. What did they do with your wine when they bought it in bulk?

A. They would bottle it and sell it to the trade.

Q. What was the difference in your arrangement between your sale to them in bulk and under the bottling contract?

A. Well, in our sale to them in bulk, it was an outright sale, at so many cents per gallon, invoiced then at a bulk figure; if we had a tank car, 6,000 gallons, the price was 35 cents. We would bill them accordingly, 35 cents K.M.O.

Q. And then they bottled and sold it?

A. Then they bottled it for themselves. That was their wine, when it was shipped in bulk, when we shipped it out under the contract bottling arrangement in bulk. The wine belonged to us, it was our wine, it was shipped to them. They bottled that wine.

Q. Was it shipped in carload lots?

A. It was shipped in carload lots to the account in the East. They bottled that wine for us at a contract price. We then sold them our merchandise, our bottled goods to them in cases.

Q. Whose label went on it?

A. Well, in the beginning, that is right after

(Testimony of Robert Mondavi.)

October, they had used their label, and then after that we found that we would have to use our own label on it, so we changed and made them use our own label, that is, our C.K. label. [310]

Q. When you were describing this arrangement during your examination by Mr. Marcussen, I believe that you spoke of it as a way of circumventing the OPA regulations, did you not?

A. I would say it was a method to get a higher price for our merchandise. Our wine cost us over double, about double of what the OPA ceiling price was. We paid \$75 a ton for grapes in 1943, and \$85 a ton for white grapes, so our cost was far in excess of the 28 cent price that was set by OPA.

Q. But by this little change in your marketing method you were able to get a price by which you were most satisfied?

A. Definitely.

Q. I think your choice of words was very good. Then, when you testified that the average market value of dry wine in December of 1943 was 75 cents to \$1.00 a gallon, you were referring to wine sold under this bottling arrangement, contract bottling arrangement?

A. The return, yes, would be under the contract. In other words, I would, referring to that particular phase of it, there were other methods used in other companies trying to circumvent, as you say, the OPA ceiling, and that is the way we achieved that price, the market value.

Q. Is that 75 cents to a \$1.00 a gallon value that you placed on dry wines in December of 1943 an

(Testimony of Robert Mondavi.)

average value of all dry wines?

A. I would say that it was an average, between those [311] figures, at that time.

Q. And included in that average, the fine wines such as the Charles Krug brand? A. No.

Q. You testified that, did you not, that the price you received for that net was \$6 for 2.41 gallons?

A. Well, if you want to place it that way, yes.

Q. And in considering this market value, you did not include the value of wine such as the Charles Krug wine?

A. No, I did not include the Charles Krug wine.

Q. Then I don't understand, Mr. Mondavi, what wines you are talking about when you said the market value of dry wines was 75 cents to \$1.00 a gallon.

A. I was referring to the competitive, to the competitive wines. That is, that is what I was referring to there. In other words, I mentioned to you——

Q. The competitive wines in December of 1943?

A. Yes.

Q. But you testified that in December of 1943 your 1943 crush was not yet ready for market?

A. No, I didn't testify that way. I told you that at that time it was my assumption, no, my understanding, because it's been our practice to blend in November, the latter part of November or December, part of the 1943 crush. Now, I am not certain when that took place in this particular year. I [312] would have to check our records. I have the com-



(Testimony of Robert Mondavi.)

plete records, and I could find out.

Q. But you stated, did you not, Mr. Mondavi, that the 1943 year crush was to be finished in some degree in 1943?

A. What you asked me, you asked me a question that you had placed all of your 1943 in glass, or in bottles, or sold all of it as such. In other words, 100 per cent of 1943. My understanding of your question was did I sell 100 per cent 1943 before the end of the year.

Q. That was my question.

A. At that time I said I wasn't certain. I did not—I did not know completely because we were blending '43 and '42. Now, I don't know how much '42 I had left at that particular time and whether it carried me through, so I am not quite certain on that whether it was completely 1942 or 1943. I would say there would be a blend of '43 and '42.

Q. So when you referred to market value in December of 1943, as I now understand your testimony, you are speaking of a blend of your 1943 and '42 wine?

A. At that particular time that was what we were shipping.

Q. And sold under this contract bottling arrangement you referred to?

A. That's right. Now, as I said, I am not quite positively certain whether we sold 100 per cent 1943, at that time. I don't [313] think we did, but I would have to check my records on that.

Q. Did the change to the contract bottling ar-

(Testimony of Robert Mondavi.)

rangement step up the quantity of wine that was shipped to New York, to this outlet in New York?

A. Well, at that time, we could sell all of the wine that we had available. It did—in other words, moved out as fast as we could get it ready and ship it out.

Mr. Brookes: That concludes my examination of the witness.

Mr. Marcussen: Would you read the last question and answer, please, Mr. Reporter?

(The last question and answer were read by the reporter.)

#### Redirect Examination

Q. (By Mr. Marcussen): Do you know what the expression “current wines” meant in the wine industry in 1943?

A. Current wine meant the wine produced, well, I am not quite certain of that. My understanding of current wine was that it was the young wine produced the following year; in other words, in 1942, and selling the wine during 1943. The current vintage would be the 1942 vintage.

Q. Yes. Now, even in December of 1943, what wines would be embraced within the expression of current wines, if you know, as that expression was used by the OPA? [314]

Did you get my full question? What was meant as the expression was used by the OPA?

A. My understanding would be that it was the

(Testimony of Robert Mondavi.)

'42 and the '43 that was shipped at that time was current wine.

Q. Do you know how old wine could be and still be classified as current wine as that expression was used by the Office of Price Administration?

A. No, I'm afraid I would have to review that. I am not quite certain.

Q. Counsel asked you whether your evaluation of the 85 cents a gallon on the wine in December of 1943 was based upon this so-called contract or franchise bottling method, and I think you answered, "Yes, it was, and other methods." Now, what other methods did you have in mind?

A. Well, as far as we are concerned, we made a sale of winery and wine in which we were able to get better than the OPA ceiling; in other words, for the wine by—well, by selling, we sold the wine naturally at the OPA ceiling price, but our property price went up higher than the actual selling price that we could get for the property at that time.

Q. By the property, you mean the winery property?

A. That's right.

Q. And a sale of that type that you have just described would reflect a value for the wine at the 85 cents, as you have just testified? [315]

A. Yes.

Q. What was the name of that winery that you sold in December of 1943?

A. Poggi Cellar.



(Testimony of Robert Mondavi.)

Q. What type of wine was that that was sold with that winery?

A. That was the crush of 1943 vintage.

Q. And that had been crushed when?

A. In September and October of 1943.

Q. And that was not finished wine, was it?

A. No, that was not finished wine. I would like — I am not quite certain whether that is finished or not. I would like to take that back, I don't recall definitely whether that was finished wine or not.

Q. Could you refresh your recollection from anything you have in your file?

A. Let me look at the record a minute.

Q. Were there any finishing facilities in the Poggi Cellar?

A. No, there were not. I can be almost certain that it was not finished, but, to really confirm it, I would like to check, but I am almost certain it was not finished.

Q. Could you obtain that information for us by tomorrow?           A. Yes, I could.

The Court: Have you got the data here from which you [316] could determine that?

A. No, I haven't. I could get that.

Q. Could you ascertain that by a telephone call?

A. Yes, I think I could.

Mr. Marcussen: If Your Honor please, Counsel and I would stipulate that the witness may go to the telephone and make that telephone call providing neither he nor I talk to the witness, if that is agreeable to Your Honor.

(Testimony of Robert Mondavi.)

The Court: Well, I don't want to put too many things off until tomorrow.

Mr. Marcussen: That won't be put off until tomorrow; we will get that right now.

The Court: Do you want him to leave the stand and go and telephone?

Mr. Marcussen: As soon as we are finished with the examination.

The Court: All right.

Q. (By Mr. Marcussen): Now, with respect to ordinary table varieties of wine, is there any difference in quality between that produced in Sonoma County and that in Napa County?

A. They are different regions, as far as that is concerned, but they are classified in competitive standards as comparable in price.

Q. Yes. In other words, so far as you know, there is no [317] difference in price between ordinary wines—table variety of wines produced in those two valleys?

A. By and large, no. I would say that the two counties, there is no difference. I would like to qualify that by stating that it depends on the individual that is selling the wine, what he can get and the way he produces it.

Q. Yes. What importance does that have on the quality of wine?

A. Well, it has quite a difference. In other words, one producer, he has better facilities and will make wines better than the other, and may have a better reputation, and, due to that, is able to get

(Testimony of Robert Mondavi.)

probably a little premium over someone else.

Q. Yes.

A. But producers that are on an equal footing or equal basis in Napa and Sonoma Counties, the prices would be closely comparable. They would be comparable.

Q. In other words, is it your testimony that the cost of grapes is merely one of the items—I beg your pardon, quality of the grapes is merely one of the items in determining the value of the wine that is produced?           A. That's right.

Q. Did you testify that it takes longer to age red wine than it does white wine?

A. That's right, yes. [318]

Q. And are you speaking now of higher quality red wines?

A. I am speaking of higher quality red wines, yes, and of the fully matured wines.

Q. You weren't speaking of ordinary wine, were you, ordinary table varieties, selling at ceilings of 28 and 33 cents?

A. Let's put it this way. No, I wasn't speaking of that, I say that wines that are current wines aren't fully matured. They are younger wines, but they haven't reached their perfection. In other words, fully matured wines have been aged over a period of time and reaches its acme of perfection at a certain number of years, and that is what I expressed as fully matured wines.

Q. Now, do you produce wines of approximately three different qualities at the Charles Krug?

(Testimony of Robert Mondavi.)

A. At that time we produced only two qualities because your Napa Vista, we were not selling our Napa Vista.

Q. And that was all at the Krug Winery?

A. Yes, Krug Winery.

Q. And so far as you know, is that an efficient operation for the production of wine?

A. The Krug?

Q. Yes. A. I would say average, yes.

Q. Do you know whether this contract bottling method of [319] merchandising wine which was adopted, as you testified, in October of 1943, whether that method was available to any winery which wished to adopt it?

A. I don't know what you mean by available. They would have to go—they would have to get it from—either get an attorney or by talking to other people who knew that they were doing that.

Q. Were bottlers at that time—was there a scarcity of wine at that time?

A. Yes, there was.

Q. And were bottlers making an effort to get wine under those—that type of contract at that time?

A. They were willing to do almost anything to get wine. I will put it this way, and as far as we are concerned, and as far as I know, they, the wineries here in California more or less devised the means of a contract bottling, although some were definitely aware of it in the East.

Q. And when you used the term “circumvent”,

(Testimony of Robert Mondavi.)

with respect to that practice, did you mean to imply anything illegal?

A. No, definitely not. That is one reason why I hesitated on the word itself. It was a means of getting around it, legally. In other words, getting our price legally.

Q. So far as you know, franchise bottling was not a practice which was condemned in 1943 or '44 by OPA, isn't that correct? [320]

A. 1943 or '44, did you say?

Q. Yes.

A. Well, our particular firm received an O.K. from the Regional Office some time in the early part of 1944 that that method was legal.

Q. Yes.

A. At that particular time.

Q. Do you know whether this method of selling wine involved any increase in price of the wine to the consumer?

A. Yes, I think it did, yes. I am not certain about that, but—I am not certain of that statement, certain of the answer on that statement.

Q. Answer so far as you know.

A. Excuse me, let me just try to think this out.

Q. I can ask another question which I think might clarify it. Whose ceilings, whose price ceilings were used when the bottled product was sold to the public, under those conditions?

A. You mean——

Q. Who sold the bottled product to the public?



(Testimony of Robert Mondavi.)

A. The wholesaler, and they used their ceiling on that.

Q. And by the wholesaler, do you refer to the bottler?      A. The bottler, yes.

Q. Yes. And what was the—that was a bottled price, wasn't it?      A. That's right. [321]

Q. And was that price a price which was determined by the OPA ceilings at that time for the bottled product?

A. That was. I am not certain whether it was determined by the OPA ceilings, but it was within the framework of the OPA Regulations. In other words, in the price that we established, it was within that framework. I am not certain whether it was established by the OPA ruling itself, or by our own price ceiling.

Mr. Marcussen: That is all.

#### Recross Examination

Q. (By Mr. Brookes): I hand you, Mr. Mondavi, I hand you Respondent's Exhibit U, and ask you if that is the contract, copy of the contract, for the sale by you of the Poggi Winery for \$90,000 which has been admitted in evidence after identification by you?

A. You mean this copy here, this was the original agreement made with John Dumbra, an individual who was talking to me on behalf of Tiara Products Company, and he wanted to put a deposit at that time although he only signed it by his name, and then later John Dumbra consigned this part



(Testimony of Robert Mondavi.)

of it over to the Tiara Products Company.

Q. But that is the contract that you identified and which is in evidence?

A. That is the contract, yes. This is the original [322] agreement made with John Dumbra.

Mr. Marcussen: Was a formal contract entered into?

The Witness: There was an escrow agreement that was set up by the bank which was a formal agreement, yes.

Mr. Brookes: Your Honor, this document has been identified by the witness, and it says that they are selling 70,000 gallons of wine in the Poggi Cellar, including sale of said Poggi plant in St. Helena, total price for the plant and wine is \$90,000. I move to strike the portion of the witness' testimony beginning with Redirect Examination by Mr. Marcussen and conclude with the colloquy about the telephone conversation, on the ground that it is an attempt by the witness to state the terms of the contract in different terms than the terms of the contract itself. What he says to the extent that it amounts to testimony of an agreement is pure hearsay because it takes two to make an agreement. That is that contract and it does not say anything about the price of wine. It says \$90,000 for wine and wine cellar.

The Court: What are you moving to strike?

Mr. Brookes: I am moving to strike the testimony in which he said they sold the wine for 85 cents a gallon; it doesn't say that.

(Testimony of Robert Mondavi.)

The Court: I did not hear that. He did testify about an 85 cent price for wine, but I didn't understand that had any connection with the particular deal. [323]

The Witness: No, not at all. I did not testify to that.

Mr. Brookes: May I ask the reporter to read that?

The Court: Yes.

Mr. Brookes: That is the way I understood that.

Mr. Marcussen: Before we ask that that be done, I would like to state my recollection of the testimony which would clarify it. My recollection of the testimony is that the witness said on Direct Examination by Mr. Brookes that the 85 cents price, 85 cents evaluation, or on a 75 to \$1.00 evaluation which he gave for wine, and the 85 cent evaluation, were based upon the franchise method of bottling which he described and other methods. On Redirect Examination, I asked him what other methods he referred to in giving and describing his evaluation. He said then that a sale of the wine with the winery was the type of transaction he had in mind, and I don't know whether now——

Mr. Brookes: He did not stop there.

Mr. Marcussen: Did I ask him specifically with respect to—whether that evaluation is——

Mr. Brookes: It is that portion.

The Court: I wonder if the reporter can find that question; do you have an idea where it is?

(Testimony of Robert Mondavi.)

(The question referred to was read by the reporter.)

The Court: I will overrule the objection. [324]

Mr. Brookes: Your Honor, the point of my objection is, and my motion to strike is, that the contract is in evidence, and it speaks for itself. This witness is attempting to say that the contract says something else entirely different. That witness may represent one of the parties to the contract, but he cannot represent the other party to the contract, and to the extent that he is attempting to say that any other party to the contract paid this price or that price which varies from this price, it is the purest and most complete hearsay to the extent that the witness is attempting to speak as an expert witness, saying that the value of wine is 85 cents a gallon because it is based on sales at 85 cents. He is referring to a sale of wine and winery for \$90,000. There is no foundation for his expert testimony except perhaps his own belief, that in computing his asking prices, he may have figures at 85 cents, but that is no assurance that the purchaser agreed that the wine was worth 85 cents and that the winery was another figure. All that the purchaser did was pay the \$90,000 for the two together, so I move to strike the testimony on those grounds.

Mr. Marcussen: If Your Honor please, the witness said that the evaluation of 85 cents a gallon for wine in December of 1943 was reflected in this tract.

(Testimony of Robert Mondavi.)

Mr. Brookes: He said it was based on this contract.

Mr. Marcussen: It was based on this contract in part as well as the franchise method of bottling. Now, there is [325] nothing inconsistent in the agreement at all with that testimony, because it doesn't make any allocation in this agreement at all, and I will call attention to the fact that I attempted to get in evidence the agreement that was finally executed in the escrow arrangement to which Counsel objected and Your Honor ruled in his favor. I see no inconsistency.

The Court: I think the total price was \$90,000 for the winery and wine. He did testify, as has been demonstrated here, that this 85 cents was reflected in the price he got from both combined; I think that the objection is not well taken. I will deny the motion to strike.

Mr. Brookes: May I be given the exception?

The Court: Granted an exception.

Q. (By Mr. Marcussen): Now, Mr. Mondavi, you stated to me during the recess that a telephone call would not reveal the information we requested a moment ago as to whether that was finished wine?

A. That's right, because if I feel I can get the information, it would come from the records at the bank. I have all the files here on hand in regard to this deal outside of what the bank may have on their own file, and if the record does show there that the wine was finished or unfinished, I could let you know accordingly. I am not certain that it was

(Testimony of Robert Mondavi.)

put down in black and white. I can't recall definitely whether that wine was finished or unfinished. [326]

Q. Would your father know about that; would anybody else know at the plant?

A. Possibly.

Q. Would you telephone and ascertain what information you can about it and——

Mr. Brookes: Do you want to wait for Recross Examination? I have one question I would like to ask him.

Q. (By Mr. Brookes): Mr. Mondavi, you testified that you obtained a ruling from the OPA in February of 1943?

A. '44, I didn't say the time, I say the first part of the year.

Q. I thought you said earlier; first part of the year '44, and the ruling was that that contract bottling arrangement was not an infringement of the national price regulations? A. That's right.

Q. Do you know whether other rulings were obtained by other vintners to the same effect before your ruling was obtained?

A. No, I didn't know that.

Mr. Marcussen: Now, Mr. Mondavi, would you make a telephone call and get what information you can about this and then come and discuss it with Counsel for Petitioner and me?

The Witness: All right, that is all for the present, then? [327]

Mr. Marcussen: Yes. Call Mr. Alberigi.



Whereupon

F. ALBERIGI

was called as a witness on behalf of the Respondent and having been first duly sworn, testified as follows:

Direct Examination

The Clerk: State your name and address, please.

The Witness: F. Alberigi.

Q. (By Mr. Marcussen): Now, Mr. Alberigi, I am going to ask you if you won't kindly raise your voice and use the very best English that you can.

A. I will try.

Q. Thank you. What is your business?

A. Farmer.

Q. And where do you live?

A. Rural District, Sebastopol.

Q. How long have you lived there?

A. Oh, off and on, but I have been in the same place for the last seven years.

Q. Yes, and do you know Giulio Particelli?

A. Yes, I do.

Q. Do you see him here in the courtroom?

A. Yes, I seen him.

Q. How long have you known him? [328]

A. Well, to be sure, I would say better than fifty years.

Q. Now, did you ever have a conversation with Mr. Particelli about the sale of his winery in 1943?

A. Well——

Q. Just answer that question, whether you had the conversation.

A. Yes.

Q. You did have a conversation with him?



(Testimony of F. Alberigi.)

A. Yes.

Q. When was that conversation?

A. Well, in the late part of '43.

Q. 1943?

A. Yes, the month of December. Some time in December.

Q. Where did you have that conversation with him?

A. In my home.

Q. Will you tell me what Mr. Particelli said about that transaction?

Mr. Brookes: Your Honor, I object, the evidence of course asks for an answer which would be hearsay, and I wonder if Counsel will explain the purpose of asking such a question.

Mr. Marcussen: The purpose, if your Honor please, is just to put into the evidence admissions against interest.

The Court: Go ahead. [329]

Q. (By Mr. Marcussen): Will you tell the Judge what Mr. Particelli said?

A. Well, I—

Q. Speak loudly.

A. He came to the house, and we talked about different subjects, and then he told me that he sold his business and he said people that bought it want to buy wine, alone, but to make it legal on account of the OPA ceiling, I sold the winery and everything. That is what he said.

Q. What else did he say?

A. Well, he said that he got a dollar a gallon for the wine, and he sold—he had 400,000 gallons.

(Testimony of F. Alberigi.)

Q. What did he say he got for it all?

A. He got a dollar a gallon and he was going to buy a quarter of a million dollars in the city and some day we go down and help to fix it.

Q. Did he say anything about good will?

A. Yes, he said that he wants, he wants a dollar a gallon, and the rest was all thrown in, good will and the winery; he don't specify to me how much he got for the winery.

Q. He did say, however, that he threw in the winery and the good will?

A. Throw in the good will and the winery.

Q. Did he say anything about whether or not he could get a dollar a gallon if he just sold the wine?

A. Well, it was in a way, he can't explain to me to get [330] around the OPA ceiling.

Q. If he sold the wine alone?

A. If he sold the wine alone.

Q. Now, did you have any other conversations with Mr. Particelli about what he got for—on the sale of the wines prior to that time?

A. Well—

Q. Particularly with respect to his 1942 vintage?

A. One time he told me that he sold 100,000 gallons at 70 cents.

Q. A gallon?

A. A gallon, and his daughter, she was very much against selling for that price, but he thought it was the best for the business because he clear out of debts by the bank, that is what he tells me.

(Testimony of F. Alberigi.)

Q. Can you recall approximately when that conversation took place?

A. No, couldn't say that, I know it was previous to 1943.

Q. Previous to December of 1943?

A. Yes, previous.

Mr. Marcussen: That is all.

### Cross Examination

Q. (By Mr. Brookes): Mr. Alberigi, did I understand you to say that Mr. [331] Particelli, previous to December, 1943—

A. Yes.

Q. —told you that he had sold wine for 70 cents a gallon?

A. Yes, 100,000 gallons.

Q. 100,000 gallons for 70 cents a gallon?

A. I recollect very well.

Q. And did I understand you to say that he did that for the purpose of paying off his debts at the bank?

A. Yes.

Q. And then I understood you to say that in a later conversation Mr. Particelli told you something else?

A. Yes, what I told you just a little while ago, that in the later part of '43 he told me that he sold the whole shebang. In other words—

Q. The whole shebang? A. Yes.

Q. Is that the language he used?

A. Not the language exactly. Our conversation was in Italian and we don't use "shebang" in Italian.

Q. Did you have a synonym for it?

(Testimony of F. Alberigi.)

A. More or less.

Q. Do you remember exactly what he told you, and can you translate it into English?

A. I did my best now when I say, I translated it. [332]

Q. I am asking you if you can tell us exactly what he said; can you remember exactly what he said?

A. I told he came in the house. In the usual way, he used to call on us, you see, before he get his place. It was about three miles away, and then he stopped and sit down and talk about different subjects, and then he told me that he sold out, the business.

Q. You were speaking in Italian?

A. Yes, of course.

Q. But he did not use the word "shebang"?

A. Well, maybe slang, I learn it here.

Q. Do you remember any of the words that he did use?

A. Well, he said it in Italian, and it sounds to me like that way.

Q. And you understood then that he said he sold his wine for one dollar a gallon?

A. Yes, one dollar a gallon.

Q. And that he threw in the winery and good will?

A. Yes, and good will.

Q. Then, if he sold 274,000 gallons of wine——

(Testimony of F. Alberigi.)

A. He don't mention that to me.

Q. But, if he did, if he sold 274,000 gallons of wine and his winery and good will, what would you understand was the purchase price?

Mr. Marcussen: I object, if Your Honor please, calling for computation and being argumentative.

The Court: Overruled.

Mr. Brookes: Would you read the question, Mr. Reporter?

(The question was read by the reporter.)

The Witness: Well, I don't understand anything that way. I simply repeat what was our conversation and I couldn't estimate what was the value of the good will and the winery.

Q. (By Mr. Brookes): I understood, Mr. Alberigi, that the only thing that you were precise about was one dollar a gallon?

A. That's what he said.

Q. Can you multiply one dollar by 274,000 gallons?

A. I don't—I don't see why I should do that. You can easily do that yourself.

Mr. Brookes: Will you instruct the witness to answer?

The Court: Do you understand what he is calling for by that question?

The Witness: If he sold 275 gallons——

The Court: At one dollar a gallon?

The Witness: That would be \$275,000.

Q. (By Mr. Brookes): And he threw in the winery and good will?

(Testimony of F. Alberigi.)

A. If he sold 275, he told me 400,000. Don't you want——

Q. I understand what you just told me. He told you he [334] sold 400,000 gallons of wine, so then how much did he think he sold it for?

Mr. Marcussen: I object as to what he thought.

The Court: Overruled.

The Witness: To me, he told me that he sold 400,000 gallons of wine for one dollar a gallon.

The Court: How much would that be, how much did you understand it to be?

The Witness: I don't stop to figure, to me it was \$400,000, one dollar a gallon and 400,000 gallons. I don't stop to figure, I wasn't interested.

The Court: That is all right.

Q. (By Mr. Brookes): Are you on good terms with Mr. Particelli?

A. Well, I had been on good terms all the time.

Q. And you still are?

A. Lately he said I don't want to have anything to do with me for reasons and if I wish, I can tell you.

Q. Then, I take it, you are not on good terms with Mr. Particelli?

A. For me part, I am.

Q. Mr. Alberigi, did you ever threaten Mr. Particelli?      A. Me?

Q. Yes, you.      A. No. [335]

Q. Did you ever threaten him that—and tell him that he would be surprised what you were going to do to him to get even with him?      A. Me?



(Testimony of F. Alberigi.)

Q. Yes. A. Even for what?

The Court: He asked you a question.

The Witness: No, no, I never said anything like that.

Q. (By Mr. Brookes): Not in a telephone conversation or a conversation face to face?

A. No, I haven't met him for the last couple of years.

Mr. Marcussen: For what?

The Witness: For two years.

Q. (Mr. Brookes): Have you talked with him at all for two years? A. No.

Q. Have you talked with any member of his family in the last two years?

A. Yes, I talked to the son-in-law, to his repudiated ex-wife, and his daughter.

Q. Were you a friend of his ex-wife?

A. Very much.

Q. Did you remain friendly with her within the last four years? [336]

A. To the last marriage?

Q. To the last marriage. A. Yes.

Q. And when was her death?

A. Some time in October.

Q. October of last year?

A. Yes; no, I really couldn't say. I think it was during this last winter. I went to the funeral but I don't recollect exactly when the month, to be frank with you.

Q. And when did you last have a conversation with—I think you said, Mr. Particelli's son-in-law?

(Testimony of F. Alberigi.)

A. Oh, I had a conversation about a month ago.

Q. And what was the nature of that conversation?

A. Well, the nature was that he owed me some money and he don't pay me yet so I ask him if you—you want me to use slang like—I asked the boy "When you going to pay me?"

Q. Did you ask him why they didn't send you a Christmas card?

A. I told him, why, after I had done so much for him, I served him faithfully, I don't say you don't answer, it wasn't polite not to do that.

Q. Did you quarrel over this with—

A. He raised his voice a little bit but we left in a friendly term with the promise he was going to send the money.

Q. But you didn't raise your voice? [337]

A. No, not exactly. We didn't threaten each other. I asked him what kind of a man he was. After he came over to the ranch, he had asked me to do certain things and I did, and I said, "Why don't you pay me?"

Q. Did you take sides with Mr. Particelli or the late Mrs. Particelli in their divorce?

A. No, not in the divorce, no.

Q. But you remained friendly with Mrs. Particelli?

A. Always.

Q. But you are not friendly with Mr. Particelli?

A. Oh, yes, until he came back from Italy last time. In fact, I did some work for him while he was away.

(Testimony of F. Alberigi.)

Q. And why did you cease to be friendly with Mr. Particelli?

Mr. Marcussen: He didn't say he ceased to be friendly, he testified that he is friendly yet with Mr. Particelli but it's Mr. Particelli that won't talk to the witness.

Q. (By Mr. Brookes): What is the circumstances that caused you to stop speaking to each other?

A. I said to my—I wanted to meet him and explain the situation. His ex-wife, she asked me, they bade me to go and she wants to go to a lawyer. She thought when he divorced her she was—she said that he don't give her what was coming to her, and if I please go as an interpreter to the lawyer. Mrs. [338] Particelli asked me and I went, and that is why he got sore at me.

Mr. Brookes: I have no further questions of this witness.

#### Redirect Examination

Q. (By Mr. Marcussen): How long did you know Mr. Particelli?

A. I know over 50 years.

Q. Yes, and what did—please describe the conversation you had with Mr. Particelli about when you told him, or he inquired, whatever it was, about whether you knew that his wife had gone to a lawyer. Did you understand my question?

A. I understand your question.

Q. Just tell me about that incident.

A. He come back from Italy with the new bride.

(Testimony of F. Alberigi.)

Q. About when was that?

A. I can't recollect. It was some time—I think about on, say a year ago, when he came back. I don't remember the date, and he came over to the ranch to introduce the new bride.

Q. Yes.

A. So, we talked about different subjects. I asked how things was over there and everything and pretty soon he said, "Did you know my ex-wife is suing me?" and I don't want to get in the conversation, and I said, "Don't tell me anything."

He said, "I know all about," and I said "How do you know?" and he said to me, "How do you know?" [339]

I said to him, "Well, I was present when she went to the lawyer. I was an interpreter because she couldn't speak English and I translate the language for her."

He say, "You my friend," and I said "She is just as good friend to me."

She asked me that favor. I did. He jumped in the car, went away in a huff, and never spoke to me again.

Q. And what did Mrs. Particelli explain to you about this legal business that she had with the lawyer?      A. Mrs. Particelli?

Q. Yes.      A. Well, she sue him——

Mr. Brookes: Your Honor, I object——

Mr. Marcussen: If Your Honor please, it was brought out on cross examination. The witness has been impeached as being very friendly to Mr. Parti-

(Testimony of F. Alberigi.)

celli, and I am just bringing out all the facts about the circumstances.

Mr. Brookes: Your Honor, I think that hearsay of that character goes beyond—that is an effort to prove what Mrs. Particelli—

The Court: I don't think we are interested in particular what her grievance was if she had any, of what she told him. Apparently, the ill feeling grew out of the fact, as he testified, that he went down to see the lawyer with Mrs. Particelli as her interpreter. [340]

Mr. Marcussen: Very well, I will withdraw the question.

Q. (By Mr. Marcussen): Did you receive Mr. Particelli in a kindly manner when he came to you with the new bride?

A. In the usual way.

Q. In the usual way?

A. No, it wasn't no bad feeling at all. In fact, no bad feeling on my part today.

Q. Now, what was this money that the son-in-law owed you?

A. Well, he came over and asked me if I—you see, I was the only friend of Mrs. Particelli, the old lady Particelli. I was the only one really that could talk to her.

Q. By friend, you mean close friend?

A. Very close; and he came over and said, "My mother-in-law, she very sick, and we want a will, wouldn't you kindly come down to see if she is will-



(Testimony of F. Alberigi.)

ing to make will," so I say, "You know it costs money to travel."

He said, "That is all right. You will be well paid."

So I came down to the city three different times to talk with the old lady, and finally I had her agree to make a will.

Q. What did you tell her?

A. I told her, she asked me when I come down to the city, and I told her I came to take care of my affairs, made my will. [341] I asked her, "Did you make yours?" She said, "No," and then I began to talk about it. It would be very nice to make her one, and if something happened and it would be much easier for the children to have a will, and finally she said, "Well, when I get better, I will do it."

She said, "Come back next time," but finally she got worse, and she made the will without me.

Mr. Marcussen: Now, if Your Honor please, I would like to call upon Counsel to stipulate that Mr. and Mrs. Guerrazzi, that is, the daughter and son-in-law of Mr. Particelli, are the beneficiaries of the will of Mrs. Particelli, is that stipulated?

Mr. Brookes: Yes, it was stipulated several hours ago, Counsel.

Mr. Marcussen: Not in open court.

Mr. Brookes: That is true, not in open court.

Mr. Marcussen: And that the matter of participation in her estate was that about two-thirds of the property was left to her daughter and husband



(Testimony of F. Alberigi.)

jointly and the other third to her daughter.

Mr. Brookes: As I recall it, that was the proportion. Your Honor, when the witness is through, I would like to call, for the purpose of impeaching the witness, recall Mr. Particelli and also call Mr. Guerrazzi who is here in the court and about whom he has testified. [342]

The Court: You can do that on your rebuttal.

Mr. Marcussen: That is all with this witness, if Your Honor please.

Mr. Brookes: May I ask one final question?

Mr. Marcussen: Yes.

Mr. Brookes: I don't know whether I correctly understood him.

#### Recross Examination

Q. (By Mr. Brookes): Did I understand you to say that you advanced some money to young Mr. Guerrazzi for—that you loaned some money to Mr. Guerrazzi? A. No, no, no.

Q. Did I understand you to say that you paid for some of the expenses of the illness of Mrs. Particelli?

A. No, not at all, they had money to burn, those people. They don't have to have any money.

Q. Did you not say——

A. I said that he promised me to pay if I was coming down and convince the old lady to make a will, exactly that.

Mr. Brookes: Thank you, that is all.

Mr. Marcussen: Thank you, that is all, Mr. Al-

(Testimony of F. Alberigi.)

berigi. If Your Honor please, I would like to stipulate that Counsel may call Mr. Particelli and any other witness he wishes to impeach the witness here, for the convenience of Mr. Alberigi. [343]

The Court: You mean now, out of order?

Mr. Marcussen: Yes, out of order.

The Court: All right.

(Witness excused.)

Mr. Brookes: Mr. Particelli, will you take the stand?

Whereupon,

#### GIULIO PARTICELLI

having been previously duly sworn, was recalled in rebuttal on behalf of the Petitioner and testified as follows:

#### Direct Examination

Q. (By Mr. Brookes): Mr. Particelli, Mr. Alberigi has testified that prior to December of 1943, you told him that you sold 100,000—

Mr. Marcussen: Just a minute, I beg your pardon.

Q. (By Mr. Brookes): —100,000 gallons of wine for 70 cents a gallon.

A. I never said nothing.

Q. I haven't asked you yet, Mr. Particelli, whether you said that. At the beginning of December, 1943, how much money did you owe the bank?

A. I forget, in December, 1943.

Q. Before the sale of your winery and your wine? A. Over \$75,000. [344]

Q. Did you testify yesterday that the bank re-

(Testimony of Giulio Particelli.)

quired that all the receipts from the sale of wine be paid to the bank for application against your loan?      A. Yes.

Q. If you had received \$70,000 from the sale of 100,000 gallons of wine in 1943, would that have been paid to the bank to reduce your loan?

A. All the money is being paid by the bank.

Q. By the bank or to the bank, which do you mean?      A. It goes to the bank.

Q. It goes to the bank. Did you at any time owe the bank as much as \$140,000?

A. If I owe to the bank?

Q. Yes.

A. I think one time I owed around \$140,000.

Q. When was that reduced?      A. In 1943.

Q. Under what circumstances?

A. Before the crushing season.

Q. Before the crushing season?

A. In the beginning of the crushing.

Q. And how much did you borrow for the 1943 crushing season?

A. I think I borrowed 75 or 76 thousand dollars, \$77,000, something like that. [345]

Q. That was in the 1943 crushing season?

A. Yes.

Q. And you have stated that in December of 1943 you owed the bank \$75,000?      A. Yes.

Q. When did you—did you make any substantial payments to the bank to reduce the loan?

A. When we sold this winery?

(Testimony of Giulio Particelli.)

Q. Before the sale of the winery, but after the crushing season.

A. Yes, after the crushing season.

Q. How much did you pay the bank in September and October and November of 1943?

A. I paid all the money I collected for—I don't know if I be paid in full.

Q. Do you remember how much you owed the bank in July, before the crushing season?

A. Around—I can't recall exactly.

Q. Well, do you remember approximately?

A. More than \$50,000.

Q. More than \$50,000?

Mr. Marcussen: May I have that last question and answer, please?

(The last question and answer were read by the reporter.) [346]

Q. (By Mr. Brookes): And then in December you owed them \$75,000?

A. Yes, for buying grapes.

Q. Now, when you stated that you thought you did owe the bank \$140,000, did you mean to say that there was—that that was the total amount that you had borrowed at different times? A. Yes.

Q. Did you mean to say that you owed that large a sum at any one time? A. I think—

The Court: Wait a minute, wait a minute.

Mr. Marcussen: I object on the ground that Counsel is leading the witness here and practically testifying.

The Court: He is trying to get him to explain

(Testimony of Giulio Particelli.)

the answer. I will overrule it. It is pretty difficult to question the witness.

The Witness: I don't think I owed it all at one time.

Q. (By Mr. Brookes): Would you repeat your answer?

A. I don't think I owed it all at one time, the \$140,000, because I think in—during 1943, maybe some time it be reaching a \$143,000 for a short time. I keep no pay every time I collect money.

Q. Mr. Particelli, did you ever tell Mr. Alberigi that [347] you sold 100,000 gallons of wine for 77 cents a gallon?

A. I never tell Mr. Alberigi nothing, I no tell nobody else my business.

Q. Did you tell Mr. Alberigi that you sold your wine and your—and threw in the winery and sold the wine for \$1.00 a gallon?

A. I never said nothing to Mr. Alberigi.

Q. Did you tell him anything about the details of the sale of your wine and winery? A. No.

Q. Mr. Particelli, has Mr. Alberigi ever threatened you?

A. Yes, I tell him—me and Alberigi, we have been very friendly for 50 years. We were born in the same country, we go to school together in the Old Country, and after we come to America in California for the last, say 25 or 30 years, we have been friends. And two years ago, when I come back to Italy, I went to see Mr. Alberigi at the ranch, and I tell him, you know, shake hand and one thing and



(Testimony of Giulio Particelli.)

the other. I said, "I heard you put your nose into my family trouble."

Mr. Marcussen: You said that?

The Witness: I said that. I say, "I no expect a friend like you to bother in my family, because I take care of myself and my family."

We have a divorce, me and the wife, and we agree in Santa Rosa in divorce to pass \$300 a month from my wife and [348] also the house in the city for live, 1350 Francisco, into which live, and I think my idea she can make a good living.

Mr. Marcussen: What was that agreement?

The Witness: It's in the divorce in 1947, 1946, we have the divorce and agreement, '45, '46.

The Court: Is that what you told Alberigi?

The Witness: Alberigi?

The Court: Yes.

The Witness: You no supposed to stick your nose in my business like that. The wife is by my daughter, my son-in-law. He has brought an offer to live her. Why you put—bring my wife, convinced my wife to put him in the court, spend the money. If my wife wants half, why don't you come to me. My daughter, my son-in-law, instead of giving \$300 a month, I give half the property and we don't go to court.

The Court: Is that something you told Mr. Alberigi?

The Witness: Yes.

Q. (By Mr. Brookes): Did you just mean to

(Testimony of Giulio Particelli.)

testify that you then and there gave her one-half of your property?

A. I told—about this court already. The first time or second time, the second time.

Q. After you returned from Italy—

A. Yes, when I reach Santa Rosa, the attorney serve me the paper. [349]

Q. As soon as you came here?

A. And I surprised, I look at the paper, I see in court.

Q. Mr. Particelli, I don't think you understood my question because your answers have gone considerably beyond it. They are helpful to the extent in indicating background of the quarrel between yourself and Mr. Alberigi. Did you, as a result of that conversation and that episode of a quarrel with Mr. Alberigi—

A. No.

Q. Have you had a quarrel with Mr. Alberigi?

A. What?

Q. Do you know what quarrel means?

A. No, I wish you explain me.

The Court: Have a fuss?

Q. (By Mr. Brookes). Have you had a fight with Mr. Alberigi?

A. No.

Q. Are you still good friends?

A. Oh, yes.

Q. Has he anything against you?

A. I don't know.

Q. Has he ever threatened you?

A. All the time we be friends for the last 50 years.

(Testimony of Giulio Particelli.)

Q. Then he has never threatened you and to harm you? A. We never fight. [350]

The Court: I don't know whether I understand—if he understands what that word "fight" means.

The Witness: You mean sued one or the other? We never do.

Q. (By Mr. Brookes): Did Mr. Alberigi ever tell you he was going to do something to harm you?

A. Well, after—the next morning I be in the city right away, when I see the paper I go to the city to see my daughter. For why do you like that, to put me to court?

Mr. Marcussen: When was that that you saw the daughter?

The Witness: Right next day I talking to Alberigi in the evening and go to my daughter and son-in-law, why you people put in court, spend money for nothing for it. If the mother wants half the property—

Q. (By Mr. Brookes): That isn't what I have asked you, and this is very interesting, but it isn't important in the case.

Mr. Marcussen: I think it is important. I would just as soon have the witness testify about it.

The Court: We are trying to get at what caused the ill feeling between Alberigi and this witness.

Q. (By Mr. Brookes): Did you have a telephone conversation with Mr. Alberigi? [351]

A. Yes.

Mr. Marcussen: When?

Mr. Brookes: I am not finished with my question.

(Testimony of Giulio Particelli.)

The Witness: About two weeks after, I have a telephone in my home at Santa Rosa, but no more than two weeks, maybe a month or a month and a half.

Q. (By Mr. Brookes): What was said in this telephone conversation?

A. You want me to explain it?

Q. I don't want the background; I am trying to find out what you said and they said.

A. He want to talk to me. All right, come down to the house.

Mr. Marcussen: Who?

The Witness: Alberigi.

Mr. Marcussen: May it be understood that I may ask these questions as I go along? I frankly say that if I wait, I simply could not cross examine.

The Court: Just so we understand. I think you can, either of you can come in and ask for a fuller understanding of his answers. That is about as far as we go.

Mr. Marcussen: What was the last answer?

(The last answer was read by the reporter.)

The Witness: And I say I down home. He answer, "I don't come down to your house." He told me I want to meet in [352] some other place—in the bank, in Sebastopol—he every morning to bring his boy to school. I say we can meet down at the bank. Even in the bank he said I don't want to meet you. He say I want to meet me some place down to Forestville.

(Testimony of Giulio Particelli.)

Why go down to Forestville to meet one or the other?

Mr. Marcussen: May I have the reporter read that answer, please?

(The last answer was read by the reporter.)

The Witness: And he say, well because I want to talk to you, Alberigi tell me. I said to Alberigi, if you want to talk to me, Mr. Alberigi, you know where I live.

Mr. Marcussen: You know where I live?

The Witness: Yes, in Sebastopol, you going to be sorry one of these days.

The Court: Who said that?

The Witness: Alberigi.

Q. (By Mr. Brookes): Will you repeat it?

A. You are going to be sorry by me, and I never talk no more until time I see him in Sebastopol, we never talk again.

Mr. Brookes: I don't think the reporter got all the first statement. Will you read back that last answer as far as you got it?

(The last answer was read by the reporter.)

Q. (By Mr. Brookes): Is that all that you said, Mr. Particelli? A. Yes.

Mr. Brookes: Very well. Have you completed your cross examination?

Mr. Marcussen: No, I haven't begun.

Mr. Brookes: You haven't?

Mr. Marcussen: No, I have not.

Mr. Brookes: I thought you were when you were asking questions.



(Testimony of Giulio Particelli.)

Mr. Marcussen: That wasn't cross examination, that was clarifying the record, Mr. Brookes.

Mr. Brookes: I see.

### Cross Examination

Q. (By Mr. Marcussen): Did you owe the bank any money on October 1, 1943?           A. Oh, yes.

Q. How much?

A. I don't know, I can't recall how much.

Q. Well, you had a recollection here a moment ago on figures that you owed the bank, Mr. Particelli, when you were examined by your own Counsel. Can't you make some recollections when I ask you these questions?

A. Only time I owed the money in the bank for the last pretty near two years before the 1943, 1942, 1941, they give me the money for building the winery. [354]

Q. And on October 1, at approximately the beginning of your crush for 1943, did you owe the bank any money then?

A. I don't know if I owed any money before I started in crushing or if I paid all, and I started to take some more money to buy grapes.

Q. You might have paid all by that time, is that correct?           A. I don't know.

Q. Now, did you state that you paid over all the money you received in 1943 to the bank to pay off loans?           A. If I sold the winery?

Q. Yes.           A. I pay all.

Q. And did I understand you to say that you

(Testimony of Giulio Particelli.)

took all of the money and you had to give all of that money to the bank in order to liquidate your bank loan?

A. Put the escrow in the bank, and as soon as the money be free, I told the bank to pay itself first.

Q. I see. There was money left for you then after that, wasn't there, Mr. Particelli?

A. Yes.

Q. Now, when you went over to see Mr. Alberigi, did you have your wife with you, your new bride?

A. You mean the last time?

Q. No, this time. [355]

A. You mean the last time I been in Alberigi's home?

Q. Yes. A. My wife in the car.

Q. Didn't she go in the house?

A. No, we don't go in the house.

Q. Did you introduce Mr. Alberigi?

A. Yes.

Q. To your wife? A. Yes.

Q. You brought him out of the house to introduce him? A. No, we no go in the house.

Q. Where did you introduce Mr. Alberigi?

A. In the yard, outside.

Q. He came out of the house as you drove in?

A. When I reach the house, there is the wife is outside.

Q. His wife was outside?

A. Yes, and Mr. Alberigi also, out in the yard in front of his house.

(Testimony of Giulio Particelli.)

Q. And he came up to your car?

A. I get out of the car and I shake hands, you know, and introduce my wife to him and for his wife.

Q. And what did you say after you introduced them?

A. Nothing. I say I married again, this is my wife. She is coming from the same town, she know his mother, his father, ask him how everything be down there, so start talking [356] about Old Country.

Q. How long did you talk about the Old Country?

A. What is the people thinking down there, what is the war is doing, what the country looks like, old thing like that.

Q. And how long did that conversation go on in that manner?      A. About ten minutes.

Q. About ten minutes you talk about Italy and the old times?

A. Just a few words, later, and after I ask him about this trouble, stick his nose in my family—

Q. But it was you, you say, that raised the question as to what business he had sticking his nose into your affairs?

A. After we introduced one and the other.

Q. Then you just went from this conversation, this friendly conversation about things in Italy, and then you suddenly asked him what did you go sticking your nose in my business?

(Testimony of Giulio Particelli.)

A. I asked him friend, why for he does to stick his nose in my family.

Q. You asked him that in a friendly manner, is that it?

A. We have been friends all his life. We never be mad to one or the other.

Q. And did you settle that law suit, that second law [357] suit, with your wife?

A. I settled right next week. I give her half.

Q. What did that amount to?

Mr. Brookes: I object to the marital problems of Mr. Particelli and the late Mrs. Particelli.

The Court: Sustain the objection.

Mr. Marcussen: That is all. May I have just one moment, if Your Honor please?

(Witness excused.)

Mr. Marcussen: If Your Honor please, may I retire from the courtroom for a moment to confer with this witness? I have difficulty in understanding conversation with him in low tones.

The Court: Yes. He has another witness here, I think.

Mr. Brookes: I was going to call Mr. Guerrazzi as a witness in impeachment.

Mr. Marcussen: I will wait then, if Your Honor please, and defer to Counsel.

Mr. Brookes: I want to clarify one point.

Mr. Marcussen: Will you be long? I will go out in the hall then with Mr. Alberigi.

Mr. Brookes: Mr. Guerrazzi, will you take the stand, please? [358]

Whereupon

ARTHUR GUERRAZZI

was called in rebuttal on behalf of the Petitioner and having been first duly sworn, testified as follows:

Direct Examination

The Clerk: State your name and address, please.

The Witness: Arthur Guerrazzi, 1350 Francisco Street, San Francisco.

Q. (By Mr. Brooks): Do you know Mr. Alberigi who was on the stand? A. I do.

Q. How long have you known him?

A. I should say about fifteen, eighteen years.

Q. Are you the Arthur Guerrazzi who is married to the daughter of Giulio Particelli?

A. I am.

Q. Did the late Mrs. Particelli reside in your home after the divorce? A. She did.

Q. Did you ever—did you ask Mr. Alberigi to assist you in getting Mrs. Particelli to make a will?

A. No, I didn't.

Q. Did you ever ask Mr. Alberigi to induce Mrs. Particelli to make a will at all? A. No. [359]

Q. Did you ever promise to pay Mr. Alberigi any sum of money if he got Mrs. Particelli to make a will in your favor? A. No.

Q. Did you consider that you owed Mr. Alberigi any money? A. No.

Q. Have you any business transactions with Mr. Alberigi?

A. No, no business transactions.

Q. During the negotiation of the property settle-



(Testimony of Arthur Guerrazzi.)

ment agreement between Mrs. Particelli—the late Mrs. Particelli and——

Mr. Marcussen: Which one?

Mr. Brookes: The second one, the one which Mr. Alberigi testified to.

Q. (By Mr. Brookes): Did you counsel your—your late mother-in-law? A. What?

Q. Did you advise her and help her in these negotiations?

A. You mean on the negotiations?

Q. Yes. A. The settlement?

Q. The property settlement.

A. Yes, I did help her.

Q. Did Mr. Alberigi counsel her and help her also? A. He did help her, yes. [360]

Q. Were you paid anything for your services?

A. Yes.

Q. Was he? A. Yes.

Q. Do you know how much? A. Yes.

Q. How much? A. \$1500.

#### Cross Examination

Q. (By Mr. Marcussen): How do you know that he received \$1500?

A. I made a personal certified check and sent it to him.

Q. When was that?

A. Well, I can't recall the date.

Q. Well, approximately?

A. It was—oh, I would say, let's see—the latter part of '48, I believe it was. I am not certain.

(Testimony of Arthur Guerrazzi.)

Q. Where did you get the money?

A. It was Mrs. Particelli's money.

Q. Was that after the settlement? A. Yes.

Q. Where did you get the money?

A. It was Mrs. Particelli's, she had money.

Q. I asked where you got it, and you haven't answered me [361] yet.

A. She paid—I took it out of her bank account. She told me to make this, send this money to Mr. Particelli—I mean to Mr. Alberigi.

Q. You swear on your oath that you never had a conversation with Mr. Alberigi here in which you asked him on behalf of your wife to talk to Mr. Particelli's first wife, your wife's mother, and get her to make a will? A. No.

Q. You never had such a conversation?

A. He suggested she should make a will.

Q. He suggested it? A. Yes.

Q. Were you there; did you hear it; did you hear Mr. Alberigi make that suggestion?

A. I did once, yes.

Q. Where? A. It was at our house.

Q. You were never at any time requested to, by your wife, talk to Mr. Alberigi requesting him to urge Mrs. Particelli to make a will?

A. Definitely not.

Q. Do you know whether your wife ever did?

A. To my knowledge, she didn't. She didn't have good terms with Mr. Alberigi. [362]

Q. Your wife was not on good terms with Mr. Alberigi? A. Yes, sir.

(Testimony of Arthur Guerrazzi.)

Q. And were you not, as a matter of fact, employed by Mr. Alberigi—I beg your pardon, by Mrs. Particelli to speak to Mr. Alberigi?

A. Employed by her?

Q. Yes, to—— A. No.

Q. ——to urge him to talk to her about making a will? A. No.

Q. Have you been friendly with Mr. Alberigi?

A. Yes and no.

Q. Explain your answer, please?

A. Well, several weeks ago, he called me up. He wanted to see me. He says, “Well, you didn’t—nice folks, you haven’t even sent a Christmas card to me yet, the last two years.”

I said, “Well, my wife sends the cards, I don’t. Well, this year, my mother-in-law just passed away recently, we never sent any cards,” and he said, “You know you owe me some money.”

I said, “Well, it’s the first time I knew, I thought everything was paid up of what Mrs. Particelli owed you,” and he said, “You owe me for coming down and talking to her about a will.” And I says, “Well, I don’t know what money we owe you,” and he says, “You owe me \$50.” [363]

This was the discussion.

Q. Did he say that was his expenses in making trips back and forth from time to time to see Mrs. Particelli?

A. No. At the time he came down to see her, he was down on some business or he had stayed there several times. He came down with his boy to the

(Testimony of Arthur Guerrazzi.)

doctor and he stayed there, and at that time, well, they had discussions, and I don't know what they discussed, but they were talking to each other, and also Mrs. Particelli had told me that he did mention to her about a will. He wanted her to make it, but she said she would make it of her own accord. She didn't want him around.

Q. Were you there when he talked to Mrs. Particelli about making a will?

A. I was there one time that I know of, yes.

Q. One time. Was Mrs. Guerrazzi there?

A. To my knowledge, no.

Q. She never was present? A. No.

Q. When Mr. Alberigi spoke to Mrs. Particelli about making a will? A. No.

Q. Do you know whether or not when Mrs. Particelli had made the will she did not wish to give it to the lawyer until after Mr. Alberigi had seen it?

A. No, I didn't. [364]

Q. You don't know anything about that?

A. No.

Mr. Marcussen: That is all.

(Witness excused.)

\* \* \* \* \*

### F. ALBERIGI

having been previously sworn was recalled in rebuttal on behalf of Respondent and testified as follows:

#### Further Direct Examination

Q. (By Mr. Marcussen): You testified about the conversation you had with Mr. Particelli when he

(Testimony of F. Alberigi.)

returned from Italy with his new bride?

A. Yes.

Q. Now, will you tell the Court again what the circumstances [365] were, what time it was in the day, and what—where you were, and tell about the conversation?

A. I was in my ranch.

Q. Were you outside?

A. Outside. The machine came into the yard and I recognized him, but I don't recognize the woman, so she came out, and he said, "That is my better half," that is what he said, and I said "Pleased to meet you" in Italian.

Now, I call my wife and sit down. There was a couple of benches, and we had a glass of beer.

Q. Under a tree, was it?

A. Under a tree outside. It was hot. And then we started to talk about different subjects. I asked a question about people over there, other people.

Q. How long—

A. We stayed about an hour, and then about an hour he come out and said, "Did you know the old wife, the ex-wife, is suing me?" And I said to him, "Please don't tell me, I know." He said, "How do you know?" and I said "I acted as interpreter at the lawyer's office."

And he "And you my friend, you went to interpret for her." I said, "Well, she was just as good friend as you and she asked me a favor and I did it for her."

And then he went away in a huff, that is all.



(Testimony of F. Alberigi.)

Q. And the whole conversation lasted about——

A. About an hour altogether.

Q. An hour, and how long did the pleasantries about Italy——

A. ——lasted about an hour altogether, it was nothing said about suing his wife until the end of the visit.

Q. And that was all that was said?

A. That is all that was said. "You my friend, you went to interpret for her." I said, "Well, she was just as good friend as you," and I told him there was nothing to——

Q. And thereupon he and his wife immediately left?      A. Immediately left.

Q. Now, did you get any money from Mrs. Particelli?

A. Well, after the settlement, Mr. Guerrazzi and the old lady Particelli then came over to the ranch.

Q. Where did they live at the time?

A. In Francisco Street.

Q. Who owned the house at that time?

A. Mrs. Particelli, the old lady, and I had a standing order, all the time when you are in San Francisco, come sleep my place, it's not my daughter's home, it's my home she said.

Q. Yes——

A. And she said, "Frank, we settle," and I said, "I am glad, I am glad you did." She said, "How much I owe?"

Q. Now, just a moment. When she said, "We settled," whom was she referring to? [367]

(Testimony of F. Alberigi.)

A. With Mr. Particelli.

Q. Yes.

A. We settle, in other words, in a contest to court.

Q. In other words, she told you that she and Mr. Particelli settled that lawsuit?

A. Settled that lawsuit.

Q. She wasn't talking about any settlement then with you, was she?

A. No, but she called me the time to—and I said, "I am glad you did," and the more of us were talking about what Mr. Particelli transferred to her, what the settlement was.

Q. And that—what did she ask you?

A. What?

Q. Did she ask you another question then?

A. No, she asked me how much I owed you for help.

Q. And what did you say?

A. Whatever you please I say, you don't owe me nothing because we don't have a stip, we had no—what you call stipulate, to recompense, at all.

Q. Stipulate is what you said?

A. I say if you want to give me something is up to you. She said, "\$2,000" and she gave me \$2,000 then.

Q. Did she give it to you then?

A. No, she said, "Come to the City," so I came to the City, and she told Mr. Guerrazzi to go to the bank and give me [368] \$2,000.

Q. And where did he give that to you?

(Testimony of F. Alberigi.)

A. He gave me a Cashier check.

Q. What bank was it on?

A. I think—I couldn't say, it was on Fillmore Street, Fillmore and some place over there, Fillmore and Lombard, someplace over there.

Q. Now, did you have any conversation with Mr. Particelli on the telephone after you had this conversation at your home?

A. Well, about two weeks after he left in a huff, he wrote me a letter.

Q. What did he say in the letter?

A. "Please to remit the \$35 that you authorized me to disburse to your cousin in Italy," and so I went to the telephone and I say to him, "Mr. Particelli," I call him by his first name, I said, "you asked me for the \$35," I say, "but you owe me more than that to me."

I said, "I did a lot of work for you." You see, when he left for Italy, he authorized me to attend—he had a trouble with a mortgage and the woman went in—the woman went about bankruptcy court, and I was supposed to go to the court, to the bankruptcy court, and listen and make a report, and go over once in a while to see how they keep the place, so I figured out he owed me \$38.85, and I owe him \$35.00. So I wrote to the lawyer, I say, "I am going to send you a \$35.00 check [369] if you send me the \$38.85," and that is what he did. That is the last conversation we had.

Q. And did you send a check for \$35.00?

(Testimony of F. Alberigi.)

A. I sent him a check for \$35.00 and he sent me one for \$38.85.

Q. And in the course of that conversation did you ever threaten him?

A. Why should I threaten him? At my age there was no need to threaten anyone.

Q. Did you come to any agreement on the telephone that he would send you that \$38 and you the \$35?

A. Yes, he said, "I deny the bill," so I sent it to a lawyer. See, he had a lawyer in Santa Rosa to take care of his affairs, and I send the bill to him.

Q. Did you ask him anything about why he would go to the trouble of writing a letter to you instead of talking to you—coming to see you?

A. What the conversation was in the letter, instead of saying "you" in a friendly way, he was give me the high—like I say, "Sir."

Q. In Italian?

A. In Italian, yes, in Italian, but I still have the letter home. Instead of saying "you" as the usual way—

Q. You mean familiar way?

A. Among friends he, what you say, sir, "I don't deserve [370] such a title," I told him.

Q. Did you ever have any unpleasantry of any kind whatsoever with Mrs. Guerrazzi sitting here in the courtroom?

A. No, never had anything with her.

Q. Never, at any time?           A. No.

Q. Did she avoid you at all?

(Testimony of F. Alberigi.)

A. Well, she used to come in the house and bring the mother over and then she used to go outside. She like—she don't want to get mixed up in the affairs, it was my idea, it was my idea. She never—when her mother—we was planning what to do about the regaining of her property. The girl, she never came to—in other words, she brought the mother over there, left her there and go away.

Q. Did I understand this to be her one-half of the community property?

A. That is what she was trying to—you see, the old lady, she don't know the law of the country. She thought it was like in Italy, that the woman is treated just like a servant. She don't know here in **America** you had some rights and then somebody put her wise and then she came to me.

Q. And asked you about it?

A. And asked me to go to the lawyer and translate whatever rights the lawyer gave.

Q. Did she say that she did not know that she had been [371] divorced?

A. She don't contest the divorce because the daughter, she don't help her.

Q. Now, I will ask you again whether or not Mr. Guerrazzi came to you and asked you to talk to Mrs. Particelli about making a will?

A. Well, he came in the yard one day, with a nice red new pickup. He said he was going hunting off some place. In the presence of my wife and boy. And then I told the boy, I said, "Get out of here, in



(Testimony of F. Alberigi.)

the house," and after he said, "I want to talk to me" and he——

Q. You said that to your own boy?

A. Yes, but my wife was present, and he said to me, "The old lady down there, she is very sick and I would like to—we would like to get a will."

He used that expression, "to have a will, but I couldn't convince her, you are the only man, the only person that can talk to her. Wouldn't you please come down." I thought it wasn't out of line to ask her to make a will. I say, "It will cost a little money, you know," and then I said, "You can take a horse to the trough but I can't make him drink," because she is pretty stubborn.

"You try," he said to me and I coming down and I talk to her on occasion.

Q. Where did you have to go to find her? [372]

A. From Sebastopol, five miles north, to San Francisco to Francisco Street down here.

Q. In San Francisco?

A. I came down three times.

Q. Now, did Mrs. Particelli ever stay at your house?

A. Yes, during the period that she asked me to take her to the lawyer. Mrs. Guerrazzi brought her over and sometimes she would stay even two weeks, three weeks, any time with us.

Q. And did she mention that fact when she told you that she wanted to pay you for your services?

A. She said, "I pay you," and I said, "That is

(Testimony of F. Alberigi.)

all right, it is up to you," but we never made really an agreement to pay.

Q. But when she did say that, she wanted to pay you, did she point out to you that she had stayed at your house and she wanted to pay you for that too?

A. I don't think she paid me because she stay at the house. I think she pay me because I was coming to her and brought her to the lawyer and translate the language.

Q. I misunderstood what you told me before.

A. That is the reason.

Mr. Marcussen: That is all.

Mr. Brookes: I have no questions.

The Court: That is all.

(Witness excused.) [373]

Mr. Brookes: May I recall Mrs. Guerrazzi for one question?

The Court: All right.

Whereupon

### CLOTILDE GUERRAZZI

was recalled in rebuttal on behalf of the Petitioner and having been previously sworn, testified as follows:

#### Further Direct Examination

Q. (By Mr. Brookes): Mrs. Guerrazzi, how many children did your mother have?

A. She had one.

Q. Were you it?           A. I am.

Mr. Brookes: Thank you.

(Testimony of Clotilde Guerrazi.)

Mr. Marcussen: No questions, thank you.

(Witness excused.) [374]

\* \* \* \* \*

Friday, May 19, 1950

(Met, pursuant to adjournment, at 9:30 a.m.)

\* \* \* \* \* [375]

### FRED J. FOSTER

was called as a witness on behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

#### Direct Examination

The Clerk: State your name and address, please.

The Witness: Fred J. Foster, 310 Sansome Street, San Francisco.

Q. (By Mr. Brookes): Mr. Foster, what is your occupation, please? A. I am an attorney.

Q. Do you mean an attorney-at-law?

A. Yes, an attorney-at-law.

Q. Are you acquainted with Giulio Particelli?

A. Yes, I am.

Q. Have you ever represented him?

A. Yes.

Q. In what connections? [377]

A. Well, in several connections. I was his attorney for several years, transacting any legal business that he had at the time.

Q. In more than one connection?

A. Yes, in several matters.

Q. Mr. Foster, it is stipulated in this case that in

(Testimony of Fred J. Foster.)

December of 1943, Mr. Particelli sold some wine and a winery known as the Lucca Winery to Tiara Products Company, as the result of entering into an agreement of sale between himself and Mr. John Dumbra. Did you represent Mr. Particelli in that transaction?       A. Yes, I did.

Q. Do you have any present recollection of any of the circumstances of that transaction?

A. My memory is a little hazy on it, but, to the best of my knowledge, Mr. Particelli came in to see me, oh, probably a month or so before, or several weeks before the transaction was actually closed and told me that he intended to dispose of all or part of his bulk wine at that time. I advised him of the possibility of there being a ceiling on the wine. I was not too familiar with liquor controls and so on at the time, but I did advise him of the possibility of there being a ceiling on the wine, and in my opinion, if there was such a ceiling, the wine would have to be sold at that price, and for him to keep that in mind in any transaction he might have in [378] selling his bulk wine.

Q. Did you state that was a conversation with Mr. Particelli, as I understood, several weeks before the transaction of the sale between Mr. Particelli and Mr. Dumbra?

A. Yes, that is correct. Mr. Particelli had come to me and told me beforehand that he had anticipated a deal with Dumbra through Mr. Archie Mull.

(Testimony of Fred J. Foster.)

Q. Did you have any further connection with the transaction?

A. Well, until the transaction was almost concluded, I did not. At a later time—and my dates are very vague there—but at a later time Mr. Particelli came to me and told me that there was going to be a meeting over at Arthur Anderson's office and asked me if I would attend, if I would go to the meeting in order that I could prepare the necessary contract in connection with the transaction.

Q. Did you attend that meeting? A. I did.

Q. Do you have any recollection of what occurred at that meeting?

A. Well, yes. I have this recollection, that Mr. Dumbra was present, Mr. Archie Mull and George Oefinger of Arthur Anderson, and Mr. Particelli, and at that time they told me what the intent was as far as the contract was concerned. I made notes at the time as to what the terms of the contract [379] would be, and then I was to go back and prepare the actual agreement and present it to them for signature.

Q. Did you prepare the agreement of sale?

A. I prepared an agreement of sale, yes.

Q. Mr. Foster, I hand you the stipulated Exhibit A-1 entitled Agreement of Sale. I ask you whether you prepared this document?

A. Yes, this document is similar to a copy I have in my file and I am quite sure it is the one I had prepared at the time.

Q. Did that agreement embody the instructions



(Testimony of Fred J. Foster.)

you received as you understood them?

A. Yes, it did.

Mr. Marcussen: Objection to that, Your Honor, and I move the answer be stricken on the ground there is no foundation laid as to what instructions he received.

The Court: Overruled.

Q. (By Mr. Brookes): Mr. Foster, I hand you the stipulated Exhibit E-5. The stipulated Exhibit E-5 is a letter addressed to the Bank of Sonoma County signed by G. Particelli and by Eletta Particelli. Will you examine that, Mr. Foster, and tell the Court whether you prepared the original of that document?

A. What actually took place when this letter was prepared, Mr. Particelli and myself, and I am not sure whether [380] Archie Mull was present or not, but we sat in a conference in the Bank of Sonoma in Sebastopol with the manager of the bank, who was Mr. Hotle. We went over the details of the transaction at that time. Mr. Hotle actually prepared—actually dictated this letter, to the best of my knowledge, and the escrow instructions, and they were signed there—pardon me, Mrs. Particelli was also present at the time, because these instruments were signed in the presence of all of us at that time. In other words, the Bank of Sonoma was acting as escrow agent for the transaction.

Q. And your recollection is, I believe you stated, that Mr. Hotle dictated that letter?

(Testimony of Fred J. Foster.)

A. I am quite sure that he did, yes. That is the best of my recollection.

Q. Mr. Foster, I hand you the stipulated Exhibit F-6, which is a second letter addressed to the Bank of Sonoma County and signed by G. Particelli and Eletta Particelli, and I ask you whether you prepared that document?

A. The same applies to this letter. I am quite sure that Mr. Hotle dictated the letter in my presence and that I approved the same and had the Particellis sign the letter at the time.

Q. Mr. Foster, at the time that you prepared the agreement of sale, did Mr. Particelli tell you what the sale price of the wine was?

A. Yes. [381]

Q. Do you recall what he told you?

A. I recall from looking in my file. Actually, it was \$77,000.

Q. Did Mr. Particelli tell you what the sale price of the winery was?      A. Yes.

Q. Do you recall what he told you it was?

A. No, the figure I do not recall, no—two hundred and some odd thousand dollars.

The Court: He asked if he told you.

The Witness: Yes, he did tell me, yes.

Q. (By Mr. Brookes): Do you believe that the figure which he told you is the one which would appear in the agreement of sale which you prepared?

A. Yes.

Mr. Marcussen: Objection to that, if Your Honor please.

(Testimony of Fred J. Foster.)

Mr. Brookes: I will withdraw it and rephrase it, Your Honor.

The Court: Strike that answer.

Q. (By Mr. Brookes): Do you believe that in preparing the agreement of sale you followed the instructions which Mr. Particelli gave you in relation both to the price of the wine and the price of the [382] winery?

Mr. Marcussen: Just a moment. Objection to that, on the ground it calls for his belief and not for what he knows.

The Court: I will overrule it.

The Witness: I did. I did prepare the agreement in accordance with the instructions that were given to me on that day of the meeting.

Mr. Brookes: Thank you. I have no further questions.

#### Cross Examination

Q. (By Mr. Marcussen): What were the instructions that you received with respect to the preparation of that agreement?

A. Unless I have the agreement to refer to, I will be guessing, but—

Q. In other words, you have no independent recollection now, Mr. Foster, of the instructions you received from Mr. Particelli?

A. Yes, I have an independent recollection to this extent, that I was instructed to prepare an agreement whereby there was to be a sale of a certain number of gallons of bulk wine at a total price, and included in the agreement was to be the

(Testimony of Fred J. Foster.)

sale of the buildings and equipment of the winery at a fixed price.

Q. Well, now, referring to the second conference that you described with Mr. Particelli—strike that, please. [383]

May I ask you, is it your testimony that you had a conference with Mr. Particelli with respect to the sale of his wine some time prior to December of 1943?

A. Yes, a conference to this extent, that Mr. Particelli came to me whenever he sought advice in any of the matters at the time—he came to me prior to the preparation of this agreement and informed me that he intended to sell, or at least that he had an offer to sell some or all of his bulk wine and that was the conference that I referred to.

Q. That was the first conference you had with him about this sale?           A. Yes.

Q. Then you had another conference with him?

A. The next conference, to the best of my recollection, was in the office of Arthur Anderson.

Q. How soon after the first conference was that?

A. It would entirely be a guess. I just don't know. I imagine, though, within a few weeks.

Q. Now, in response to counsel's question concerning that conference, you stated that you had refreshed your recollection from your files. What files was the document—what are the documents in your files from which you refreshed your recollection?

A. I have some rough pencil notes that I made

(Testimony of Fred J. Foster.)

at the time of the conference, giving the details of the agreement that [384] I was to prepare. The notes that I have, I have on them the number of gallons that were to be sold, the price that was to be fixed, the selling price, which according to my notes was twenty-eight cents a gallon, the price of the sale of the winery itself, and the things that were to be included in it, and from that I prepared that agreement, a copy of which I have in my files.

Q. Now, is that the same conference—that is the first conference you described?

A. The first actual conference, yes, at Arthur Anderson's.

Q. By actual conference, were there any other conferences, by telephone or anything else, about this transaction?

A. Not to my knowledge, no. I was just distinguishing between Mr. Particelli seeking advice from me originally and the conference at Arthur Anderson's.

Q. At the time he sought advice from you originally, was anything mentioned in that conference about the possibility that Mr. Particelli would sell his winery? A. Not to my knowledge.

Q. To your best recollection?

A. To my best recollection, there was no reference to the winery at the time.

Q. You wouldn't say that he did not mention it, would you?

A. No, I wouldn't say that he did not mention



(Testimony of Fred J. Foster.)

it, but to [385] the best of my recollection he did not mention it.

Q. Then you are not certain that he did not mention the possibility of selling the winery with the wine?

A. Well, it is very difficult to answer any question positively, because my memory fails me at times, now. To the best of my recollection the only discussion at that time was with reference to the sale of bulk wine, and that is the only way I could answer that truthfully.

Q. And you are not prepared to say, however, that he did not bring up the question of the sale of the winery with the wine?

A. I would not make such a definite statement on any question you would ask me, directly.

Q. Well, I notice you made very definite statements to Counsel here about the wine.

A. Things I am sure of, yes.

Q. Do you have those notes with you?

A. No, I didn't bring them. They are easily obtainable, however.

Q. What advice did you give him about ceilings?

A. I simply warned him at the time there was a ceiling, to the best of my knowledge, on wines or liquor products of that kind, it should be checked carefully, and in my opinion he would have to follow whatever the ceiling was in making any sales. [386]

(Testimony of Fred J. Foster.)

Q. You didn't purport to advise him what the ceiling would be?

A. I did not at that time, no.

Q. Did you have any knowledge at that time that the sale of a winery—I beg your pardon—the sale of wine in connection with the sale of a winery itself was or was not subject to OPA price regulations?

A. I didn't quite understand that.

Q. I will rephrase the question, then. That was not very clear.

Did you know at the time that Mr. Particelli talked to you whether OPA price regulations applied to the sale of an inventory of wine in connection with the sale of an entire winery?

A. No, I did not know that. I did not purport to know it either, because I was not familiar with that phase of the law.

Q. Did you check into that matter later?

A. No.

Q. You didn't purport to advise him at all as to what his ceiling might be; all you knew was the OPA was in existence and he had better check, is that correct?

A. That is absolutely right, yes.

Q. Now, when did you last talk with Mr. Particelli?

A. Oh, other than just a moment ago when I came into the hall here, I haven't talked to him for several years, to the [387] best of my knowledge.

(Testimony of Fred J. Foster.)

Q. Yes, and did you discuss this case with Counsel before you came here, about the matters that you were to testify to?

A. I discussed the case generally with Counsel, but not as to the matters I was to testify to, no.

Q. Did he tell you what the issue was in this case?

A. Yes, I asked him what the issue was in this case.

Q. Did he explain to you anything about the government's contention and the petitioner's contention in this case?

A. I don't know that he did in so many words, but, as I said, I asked him what the issue was in order that I would know myself.

Q. Now, when the sale was consummated, did you handle the business details for Mr. Particelli?

A. The extent of any business details I handled was closing the escrow with the Bank of Sonoma.

Q. Yes, and did you also perform any services for Mr. Particelli with respect to the reimbursement to him of any funds he may have expended on behalf of Tiara Products Company after the sale?

A. No, I don't believe I did. I am a little bit vague in my recollection as to whether I distributed any of the proceeds that were received from the sale, but I rather doubt that I did, inasmuch as the Bank of Sonoma was the escrow agent. [388]

Q. Do you know whether after the sale Mr. Particelli stayed at the premises and performed

(Testimony of Fred J. Foster.)

services for Tiara, do you remember that?

A. I am very vague on my remembrance there.

Q. Did you ever see any remittance from Tiara Products Company or their representative, Mr. Mull, as reimbursement to Mr. Particelli for services that he performed for Tiara?

A. I just don't remember and there was nothing in my file that referred to it, so I don't know.

Q. Did you ever send or remit any moneys to Mr. Particelli at all?

A. I have a very dim recollection that I might have remitted moneys to him, yes. That I could ascertain very easily from my checks, however.

Q. I hand you Respondent's Exhibit N in this proceeding, which purports to be a letter from Mr. Mull of Tiara Products Company, dated July 11, 1944, and ask you to read the second paragraph of that letter.

A. I am sure that that is correct.

Q. Does it refresh your recollection?

A. Somewhat, yes. I have a vague recollection of the transaction there, where I remitted money to Mr. Particelli.

Q. Do you remember that check of \$500?

A. Vaguely.

Q. Now, do you remember in your conversations with Mr. Particelli referring to any figure of \$350,000? [389]

A. The first time that I heard that figure was when I was instructed to prepare the agreement

(Testimony of Fred J. Foster.)

covering the total of \$350,000 for the sale of the wine and the winery.

Q. Yes, and were you informed then by them, by Mr. Particelli rather, that he had sold his winery and wine for \$350,000?

A. My notes indicate that there was a sale of wine, and the wine——

Q. I asked you whether you have any recollection of whether Mr. Particelli told you that he sold his wine and winery for \$350,000?

A. I do not have a recollection of his saying that he sold his wine and winery for \$350,000.

Q. Not even after having refreshed your recollection by conferences with petitioner's counsel and reference to your letter and file?

A. No, I do not have such a recollection.

Q. Would it be your conclusion that Mr. Particelli did make such a statement, referring particularly to the phraseology of Exhibit A-1 in this proceeding?

A. No, I do not believe that he made such a statement, because, as I mentioned, in refreshing my memory from my notes I definitely have in my notes the segregation of the wine and the winery, and there is no indication of combined sale to my knowledge at all. [390]

Q. Why didn't you prepare separate agreements of sale?

A. Mostly because I was instructed to prepare it this way, I presume.

Mr. Marcussen: Thank you. That is all.



(Testimony of Fred J. Foster.)

Mr. Brookes: No further questions.

The Court: That is all, Mr. Foster.

(Witness excused.)

The Court: That is your last witness?

Mr. Brookes: Yes, your Honor, except of course as more will appear by deposition.

The Court: Respondent may proceed with his case.

Mr. Marcussen: I call Mr. Gomberg, please.

Whereupon,

LOUIS R. GOMBERG

was called as a witness on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your name and address, please.

The Witness: Louis R. Gomberg.

Q. (By Mr. Marcussen): What is your age, Mr. Gomberg?      A. Forty-three.

Q. What is your present business?

A. I am a wine industry consultant.

Q. And do you have your own office? [391]

A. I do.

Q. And will you describe what you do as a wine industry consultant?

A. I perform services for members of the wine industry and for people outside of the wine industry having wine industry business. Those services consist of information and guidance in connection

(Testimony of Louis R. Gomborg.)

with industry marketing problems, research, economics, statistics, Federal regulations pertaining to wine industry operations and various other services.

Q. How long have you been in that business?

A. A little over two years.

Q. What were you doing prior to that?

A. Prior to that time I was Research Director of Wine Institute.

Q. And how long were you with the Wine Institute?      A. Approximately twelve years.

Q. From when, beginning when?

A. From 1936 to 1948.

Q. And what were your duties at the Wine Institute as research director?

Mr. Brookes: Your Honor, I object. I don't recall the witness stating that he was Research Director. Perhaps he was about to, had he been asked, but so far only Counsel has testified he was research director.

Mr. Marcussen: I think the record shows the witness [392] did so testify.

The Court: Were you research director?

The Witness: Yes, your Honor. May I have the question again?

(Question read.)

The Witness: My duties covered a wide field of operation, ranging from liaison services between the management of Wine Institute—

Q. (By Mr. Marcussen): Between what?

A. Between management of Wine Institute and

(Testimony of Louis R. Gomborg.)

counsel for Wine Institute, assistance to the management in connection with the preparation of industry economic studies, the actual preparation of the wine industry bulletins, known as Wine Institute Bulletins, the handling of correspondence relating to a wide variety of wine industry problems.

Q. With whom, correspondence with whom?

A. With members of the industry, governmental agencies and others, in the fields of economics and statistics, Federal regulations, state regulations, technological problems of the industry, and many other phases.

Q. Were you consulted by them with respect to marketing problems?      A. Yes.

Q. Now, prior to 1936, what did you do? [393]

A. Prior to 1936, I was the City Editor of the Associated Press in San Francisco.

Q. How long were you in this newspaper work immediately prior to your connection with Wine Institute?      A. For three years.

Q. That gets back to 1933; what did you do prior to that?      A. I practiced law.

Q. Where?      A. Ann Arbor, Michigan.

Q. And will you state the extent of your education, please?

A. How far back do you wish me to go?

Q. Well, just beginning with the last education you received, and I will stop you when you go back too far.

A. The last education was a Bachelor of Law Degree at the University of Michigan in 1931.

(Testimony of Louis R. Gomberg.)

Q. And where did you go to college?

A. The University of Michigan, received my Bachelor of Arts Degree in 1928.

Q. Where did you receive your earlier education?

A. At Duluth Central High School in Duluth, Minnesota.

Q. Now, as the result of your experience with the wine industry, in the capacities you have mentioned—

Mr. Brookes: Your Honor, may I object to the [394] qualification of the witness. There is a particular in which counsel can—well, there is a deficiency which counsel can remedy. I don't believe the Court can take judicial notice of what the Wine Institute is. Its name suggests it is the wine institute, that it has something to do with wine. I shall press my objection unless counsel prefers to identify the function and activities of the Wine Institute.

Mr. Marcussen: I will do that.

Q. (By Mr. Marcussen): Will you please state the function of the Wine Institute and describe the organization generally?

A. Yes. The Wine Institute is the trade and service organization for the wine industry of California, and the wine industry of California constitutes approximately ninety per cent of the wine industry of the United States.

Q. When you say "wine industry" what members of the industry do you refer to, and what classification—producers?

(Testimony of Louis R. Gomberg.)

A. Producers of wine primarily, yes.

Q. Are there any other members?

A. Yes, there are a few members who produce only brandy.

Q. Are there any bottlers in the association?

A. Not as bottlers, but as producers who also bottle wine.

Q. Yes, and will you state for the Court approximately how many wineries, if you know, were in the State of California [395] in the year 1943?

A. In the neighborhood of 400.

Q. Now, in connection with your experience in the wine industry and as a consultant to the wine industry since that time, have you become familiar with general business conditions and economic conditions in that industry over a period of time? That is the end of my question.

A. Yes, I have.

Q. How far back?

A. My personal experience extends back to 1936, when I first became associated with Wine Institute. My research experience dates back, well, to the origin of wine production in California, and even before, of course.

Q. By origin, what year do you refer to?

A. In California?

Q. Yes. A. During the 19th Century.

Q. Well, I don't want to back into all that. I was referring particularly to whether or not you had occasion to become familiar with economic conditions in the industry beginning with its rebirth



(Testimony of Louis R. Gomborg.)

after the repeal of the 18th Amendment?

A. Yes, I have.

Q. That was the year 1933 or 1934?

A. Prohibition was repealed in December, 1933.

Q. And I think you said you had occasion, did you, to [396] review the history of the industry generally in the State of California?

A. Yes, but more than generally. It became part of my official duties at the Wine Institute to have intimate knowledge of the operations of the industry, both at the time I entered it and subsequently and also prior to the time I entered it.

Mr. Brookes: Counsel, I will stipulate that when you asked about the rebirth of the 18th Amendment you meant something else.

Mr. Marcussen: Thank you very much, Counsel. I might have been mistaken. I should say repeal, rebirth of the industry after repeal.

Q. (By Mr. Marcussen): Now, will you state generally what business conditions were in the wine industry prior to the World War?

A. The most recent World War?

Q. The most recent World War, particularly with respect to the demand for wine and marketing problems at the time.

A. When the wine industry was reborn in 1934, or specifically at the end of 1933, with the onset of repeal it was almost immediately confronted with surpluses. There was a surplus, first, in 1934 when the first demand for wine following repeal subsided, and that was followed by what might be

(Testimony of Louis R. Gomberg.)

described as continuing surpluses through the entire period from 1934 to 1941. The reason, the primary reason for those [397] continuing surpluses was the excess production of grapes, and because of the peculiar conditions prevailing in the wine industry and grape industry of California surplus grapes invariably, almost invariably, have found a home, so to speak, in the wine industry, causing the production of wine to exceed in most of the years referred to the demand for wine.

Q. By the way, what are the various types of grapes grown and how are they disposed of on the market, what channels do they go into?

A. Well, there are three broad classes of grapes used in the wine industry and grape industry of California. The names are not entirely accurate, but for whatever purposes they might have in this connection, they are wine variety grapes, table variety grapes, and raisin variety grapes.

Q. What are table variety grapes?

A. Table variety grapes are those varieties of grapes which are consumed as fresh fruit, like Tokay, and Malagas, and Ribiers, and other such varieties.

Q. Are they also used for wine?

A. They can be used for wine, and more often than not, they are also used for wine, yes.

Q. And what about the raisin variety grapes?

A. Raisin variety grapes consist primarily of the popular variety known as Thompson seedless. They are the little green grapes you buy in the

(Testimony of Louis R. Gomborg.)

fresh fruit markets. Although they are [398] designated as raisin variety grapes, for statistical purposes by the University of California and the Federal and State Departments of Agriculture, in some years the greater part of the production of Thompson seedless grapes goes into wine and table fruit rather than into raisins, but they are, nevertheless, classified as raisin variety grapes. Lesser known varieties of raisin variety grapes are the Muscats, which are also used as fresh fruit, and also go into wine, and the Sultanas, and the Zante currants. Those are the four varieties of raisin variety grapes grown in California.

Q. What are the wine variety grapes?

A. The wine variety grapes are by far the larger category, by variety, by sub-variety, or perhaps one should say genus and species to be more precise. They constitute by far the largest classification of species of grapes and range all the way from what might be described as very common wine varieties, like the Alicantes and the Corignans to the very choicest wine variety grapes, such as the Pinot Noir and the Sauvignon-Cabernet.

Q. Well, there are various others?

A. There are literally hundreds of varieties of wine variety grapes.

Q. Now, with respect to wine variety grapes, are they edible grapes or suitable for marketing as edible grapes?

A. They are edible in the broad sense. They are not normally or customarily sold as fresh eating

(Testimony of Louis R. Gomberg.)

grapes, if that is [399] what you mean.

Q. Can you describe the grape itself?

A. Most wine variety grapes, not all but most of them, are very tiny in size, and have relatively coarse skins, and are expensive to grow.

Q. You wouldn't go out of your way to eat them, would you?

A. Perhaps that question can best be answered by saying for various reasons, both economic and vintacultural, wine variety grapes are not commonly found in the fresh fruit markets.

Q. Yes. Now referring to economic conditions, beginning with 1941 and continuing through the year 1945, will you describe those conditions as briefly and generally as you can, particularly with respect to the demand for wine?

A. Yes. With the onset of the approach of war, in 1941—this is before war was actually declared—it began to appear that if war came the demand for wine could be expected to increase. There was also talk in that year of 1941 about the possibility of the government taking over all or a substantial portion of the so-called raisin variety grapes for use to feed the armed services in the event armed conflict occurred, and also to assist in feeding allied nations in the event we entered the war. However, that talk had not materially affected markets for grapes or the market for wine in 1941. It did cause an increase in the price of grapes and a slight increase in the [400] price of wine, toward the latter part of that year and the early part of 1942. Then,

(Testimony of Louis R. Gomberg.)

after war was declared, in December of 1941, there was a severe readjustment in the making in the wine industry, as well as, of course, in practically every other industry.

Q. Did demand increase?

A. Demand shot upward the latter part of 1941 and continued very high during 1942. In fact, 1942 represented up to that time the largest volume year for California wine in the history. As I recall it, the figure was about 96 million gallons. Prior to that time the peak was in 1941, when about 89 million gallons of California wine entered consumption channels. The demand for wine increased, at least the intensity of the demand increased, in 1942, continued through 1943 and 1944. In 1945 there was a period of about four or five months when the demand slackened because of price uncertainties in the wine industry, which I can describe if you wish.

Q. I don't ask you to go into that at the present time.

A. Then picked up again in the latter part of '45 and reached an all-time record high in 1946. 1946 still stands as the peak year of all years in the consumption of wine, or at least in the movement of wine from wineries into consumption channels in the United States.

Q. What was the cause of this great increase in the demand of wine, if you know? [401]

A. Well, I would attribute the high demand dur-



(Testimony of Louis R. Gomborg.)

ing this period, first, to the scarcity of distilled spirits and malt beverages.

Q. Malt beverages, you say?

A. Beer. I think that the storage—or the scarcity of distilled spirits, which included liquor, brandy and other distilled beverages, and beer, was perhaps the most important reason for the intensity of the demand for wine. Other reasons were, of course, the fact that alcoholic beverages serve, I believe, some therapeutic or quasi-therapeutic purpose to relieve tensions, tensions at that time being caused by the war. There was also—I should add there was also a continuing increase in the demand for wine which began with the repeal of prohibition, with the first year, but to explain just very briefly why that increase in demand year after year, beginning with 1934, did not produce happy economic results, it must be kept in mind that even with the increased demand for wine through those pre-war years, the production of grapes managed to keep ahead of the increased consumption for wine, so that the surplus condition I described a while ago prevailed in spite of that increased demand for wine, but during the war years the demand for wine reached proportions which to the best of my knowledge, except perhaps for about a few months after the repeal of prohibition, and except perhaps for a short period just before prohibition was enacted in 1919, effective in January, [402] 1920, have never been approached in

(Testimony of Louis R. Gomborg.)

the history of the wine industry, of, at least, California.

Q. Would you attribute any of this increase during the war in the demand for wine to economic conditions generally?

A. Well, that goes without saying. I think the expendable income of the consumer during the war period was, I believe, commonly recognized to be greater than it had been at any time prior to that time. At least, in recent years. Yes, there was a great deal of available or expendable consumer income for wine.

Q. During that time, did the government issue any orders with respect to the raisin crop and grapes available for the raisin production?

A. Yes. Yes, in 1942 the government issued what was known as a war food order. I believe the number—I am not certain of it—was 16. It was either 16 or 17. In fact, there were two war food orders, one controlling the disposition of the fresh raisin variety grapes and one controlling the disposition of the dried grapes. One was 16 and one was 17.

Q. Don't go into detail about that.

A. The net effect of those orders was to curtail sharply the quantity of grapes available for crushing by wineries. Now, to understand the significance of that, I should explain that prior to 1942 the wine industry, the wine branch of the grape, raisin and wine industries of California, had crushed an average [403] of between three and four hundred thousand tons of raisin variety grapes per

(Testimony of Louis R. Gomberg.)

year, and when the government war orders to which I alluded a moment ago were promulgated, that, for practical purposes, reduced the available supply of grapes for crushing by that three to four hundred thousand tons a year, and that intensified the scarcity of wine in relation to this extremely high demand for wine that developed during the war.

Q. Yes. Now, during the time that you were with the Wine Institute, during these war years, will you state to the Court what your duties were with regard to the dissemination of information to members of the industry concerning OPA publications and rulings and regulations; did that fall within the scope of your work?      A. Yes, it did.

Q. And did you become thoroughly familiar with those rules and regulations?

A. Yes. I would say that I did.

Q. During that time. Can you state when the price control statute was passed by Congress—do you know?

A. I am quite sure I do. I think it was January of 1942. That was the Emergency Price Control Act of 1942.

Q. Yes, and when was it effective?

A. Effective immediately. It was a war measure, as I recall it. My recollection is pretty clear because I—

Q. And will you go on with that? [404]

A. I was just saying, my recollection of that is pretty clear because immediately upon the enact-

(Testimony of Louis R. Gomborg.)

ment of that statute it became my responsibility to investigate the statute's implications with respect to wine industry operations, and I ascertained at that time that although the statute embraced wine not by name but by not excluding it from its scope, that it would be necessary to watch out for the possible application of that statute to wine prices.

Q. Yes.

A. I might add in that connection that the first regulation under the Emergency Price Control Act of 1942 that applied to wine prices was the General Maximum Price Regulation, which came out in May, as I recall it, May of 1942, and it froze the General Maximum Price Regulation, issued pursuant to the Emergency Price Control Act of 1942, froze wine prices as of March, 1942. The GMPR, short for General Maximum Price Regulation, was issued in May, freezing prices as of the highest levels charged for the particular item, or at which the particular item was offered for sale if there were no sales, in March of 1942.

Q. Now, were there any amendments and supplementary orders issued by the OPA—regulations?

A. Pertaining to wine, you mean?

Q. Pertaining to wine, yes.

A. Yes, there were. [405]

Q. What was the first of those, if you recall?

A. The first regulation pertaining to wine was Amendment No. 54 to Supplementary Regulation No. 14 of the General Maximum Price Regulation. That was issued on November 1, I believe it was.

(Testimony of Louis R. Gomborg.)

I am quite certain it was November 1, 1942.

Q. And was that the first one specifically applying to the wine industry?      A. It was.

Q. And what was the interrelationship, if any, between that regulation and the General Maximum Price Regulation?

A. May I ask you what you mean by interrelationship?

Q. Well, which controlled the wine industry; did both of them control the wine industry, did one of them, and, if so, which one?

A. The amendment to which I referred, Amendment No. 54 to Supplementary Regulation No. 14 was itself an amendment to the General Maximum Price Regulation, and as such there was a provision, as I recall it, in the General Maximum Price Regulation to the effect that—perhaps I should put it the other way; that Amendment 54 pertained specifically to wine, but in all respects in which wine was not specifically covered by Amendment 54 to Supplementary Regulation 14, the general provisions applicable to all commodities covered by that regulation would apply.

Q. Now, referring to Amendment No. 14, in general what [406] ceilings did it establish for the wine industry, particularly with respect to dry wines?      A. With respect to dry wines?

Q. Yes.

A. Amendment No. 54 established a base ceiling of 21½ cents per gallon for dry wine. To that 21½ cent ceiling could be added an amount trans-



(Testimony of Louis R. Gomberg.)

lated from a maximum of \$8.30 a ton for grapes which——

Q. Do you mean an increase in the price of grapes?

A. Yes. To that 21½ cents could be added an amount developed by a somewhat complicated formula, the net effect of which was to permit an amount to be added to that 21½ cents up to an amount of about 6 cents a gallon, which would bring the total then to about 27½, maybe a little over, cents per gallon maximum. Now, that was the maximum which the winery was permitted to charge under that regulation.

Q. And are they commonly called permitted increases?

A. Yes, the amount up to about 6 cents per gallon was known as the permitted increase.

Q. What were they based upon?

A. Permitted increases were based upon the amount paid for grapes, for crushing by the particular vintner in 1942 over and above the amount paid in 1941, up to, but not exceeding, \$28.20 per ton.

Q. Now, was it necessary for all wineries to adopt that [407] flat ceiling, plus the permitted increases, or were there other ceilings for other wineries prevailing at that time?

A. Under that regulation there were two. Generally speaking—there were minor exceptions, but generally there were two types of ceilings available to the wineries: one was the so-called flat ceiling

(Testimony of Louis R. Gomberg.)

plus permitted increases, to which I have referred; the other was the so-called March, 1942, ceiling. That meant, of course, the highest price charged by the particular vintner in March of 1942, or if he didn't make a sale, then the highest asking price, bonafide asking price, in March, 1942. Naturally, the March, 1942, price would be used only where it exceeded the maximum price developed by the formula to which I referred a moment ago.

Q. In other words, a winery could either have this flat ceiling, plus permitted increase, if its ceilings as based upon the March, 1942, levels were below those per that flat ceiling and permitted increases, or if his March, 1942, ceilings were higher, he could still use those higher ceilings, is that not true?

A. That is correct. To his March, 1942, he could add—by the same formula applicable to the so-called flat ceiling he could add an amount representing—translated from grapes into wine—the increased amount that he paid for grapes up to \$8.30 a ton in the 1942 crush.

Q. Yes. Now what was the next general regulation with [408] respect to the wine industry?

A. The next regulation was Amendment No. 14 to the——

Q. I wasn't referring to that, I was referring to the general one. Was there one in October, 1943?

A. Oh, yes, yes. That was Maximum Price Regulation No. 445, Amendment No. 3, Maximum Price

(Testimony of Louis R. Gomberg.)

Regulation—what can be referred to as MPR 445, No. 3.

Q. State generally, in general terms, the provisions of that regulation.

A. That regulation was promulgated on the 1st of October, 1943, and was effective as to wine industry services on October 7, 1943, and as to wine and other goods, commodities covered by the orders, effective on October 22nd, 1943. That regulation made a number of important changes in the wine price ceilings. It changed the so-called flat ceilings in a number of particulars. It included for the first time so-called flat ceilings for bottled wines. Up to that time there were no flat ceiling for bottled wine, just for bulk wine.

Q. By the way, all the ceilings you have been referring to heretofore applied to the sale of wine in bulk, is that correct?      A. Well,—

Q. I mean in so far as you have mentioned the figure of 21 cents—

A. When I alluded to the March, 1942, ceilings that [409] applied to either bulk wine or bottled wine.

Q. Yes.

A. Amendment 3 to MPR 445 also, for the first time, established special ceilings for a number of services connected with the production of wine.

Q. What services are you referring to?

A. The services of converting grapes into wine, the service of finishing wine.

(Testimony of Louis R. Gomberg.)

Q. What was the ceiling established for finishing wine?

A. The ceiling established for finishing dry table wine—did you wish dry table wine?

Q. Yes.

A. —was 2½ cents per gallon.

Q. What was the extent of the services embraced in that finishing of wine?

A. The extent of the services embraced was the operations of finishing, starting with the racking of wine—

Q. I don't mean to go into a description at this time of all the process of finishing the wine, but services over how long a period in the finishing of wine?

A. Well, it included all operations following the completion of the conversion of the grapes into wine, included all operations from that point.

Q. That is, from the crushing?

A. Yes, crushing, the conversion of the grapes into wine, [410] crushing, all of the operations from that point up to the point where the wine would be ready for bottling or for shipment to the bottler, if it was not to be bottled by the person producing it.

Q. Did it include storage?

A. Yes, I was going to say it included storage in the winery for a period not to exceed 180 days.

Q. Now, will you describe generally, or rather give a comparison of the ceilings established by the OPA for case goods and for bulk goods; by

(Testimony of Louis R. Gomborg.)

that I take it that case goods is the bottled product, and bulk goods being wine that is not bottled.

A. I assume your question pertains still to that Maximum Price Regulation 445, Amendment 3, that became effective in October, 1943, is that what you referred to?

Q. No—Well, I will ask you to state it, whatever the information is.

A. Well, under the original regulation applicable specifically to the wine industry, that is, Amendment 54 to Supplementary Regulation 14, issued in November, 1942, there was no prescribed or established relationship between maximum prices for bulk wine and maximum prices for bottled wine; that is, no established relationship as was done in the regulation of October, 1943; in Amendment 54 to which I alluded, the only so-called flat price established was for bulk wine. There were [411] no flat prices for bottled wine.

Q. Which amendment was that?

A. Amendment No. 54 to Supplementary Regulation No. 14. It was a rather crude regulation, if you will, in that the OPA had not yet had enough experience, nor had the industry, to retain all the elements, and rather complex elements, of wine production and distribution.

Q. By the way, in connection with your duties at that time with the Wine Institute, were you at any time a consultant to the OPA?

A. Yes, I was.

Q. When was that?

A. In 1943.



(Testimony of Louis R. Gomberg.)

Q. What part of 1943, if you remember?

A. As I recall, it was about December of 1943.

Q. And how long did you function in that capacity?

A. Until the termination of OPA, in 1945.

Q. And what were your duties in connection with that?

A. I provided information and assistance to the Office of Price Administration with respect to wine industry production and marketing practices. I provided information with respect to wine industry statistics and also with respect to economic conditions in the industry, and information relating to particular operations, so that the OPA, for example, could ascertain in advance perhaps more effectively than otherwise just how the [412] proposed regulation might affect—apply to individual types of operations within the industry.

Q. Your services, of course, were provided to the OPA by the Wine Institute?

A. That is correct.

Q. Were you compensated for that?

A. No, I was not.

Q. Was there any reciprocal relationship between the OPA and the Wine Institute with respect to your services?

A. I am not clear what you mean by reciprocal relationship.

Q. I am talking now about information provided by the OPA to the Wine Institute.

A. Well, there was a stipulation in the informal

(Testimony of Louis R. Gomborg.)

arrangement entered into between the Wine Institute and the OPA, early in the days of OPA, that the information furnished to the Wine Institute would in turn be made available by the Wine Institute to the industry, although it was not necessary a person be a member of the Wine Institute to obtain that information.

Q. How was that information disseminated in the industry?

A. It was disseminated in the form of bulletins, weekly or sometimes as often as two or three times a week, depending upon the speed with which the information had to be transmitted to the industry; sometimes perhaps once in two weeks.

Q. That is, in a formal way? [413]

A. In a written way. In addition to that, it was my responsibility in the wine industry to keep individual industry members informed regarding developments in connection with the Office of Price Administration, and of course other governmental agencies during the war, and peacetime agencies that functioned during the war.

Q. Who prepared the wine bulletins?

A. I did.

Q. Over how long a period of time?

A. About eleven years.

Q. Beginning with 1936?

A. No, I started preparing the bulletins in 1937, and until my departure from the Institute in 1948.

Q. How long was your mailing list in 1942 and 1943?

(Testimony of Louis R. Gomberg.)

A. I could only approximate that. It was not my specific job to check on numbers of the mailing list, but I do recall from time to time having talked to the chief mailing clerk about it, and it would be my best estimate at that time it was around 2,000 or 2,500.

Q. And the mailing list included other members of the wine industry generally, in addition to producers?

A. It could and can and does and did.

Q. Well, I assume it must have if there were only 400 producers. Refreshing your recollection on that, who are these other people? [414]

A. Did you say other than producers?

Q. Yes.

A. Oh, yes, the mailing list included state and federal governmental agencies, of course, members of the bottling trade, university officials, and many people in many walks of life, either directly or indirectly related to the wine industry.

Q. Yes. Now, I want to go back to the question I previously asked concerning the general relationship between the ceilings for case goods and for bulk goods.

A. Well, as I explained, there were no so-called flat ceilings for case goods established in Amendment No. 54 in November of 1942, so that the relationship existing at that time was not prescribed by OPA, except indirectly, in connection with the March, 1942, ceilings for case goods or bulk, as the case might be, and the so-called flat ceilings

(Testimony of Louis R. Gomborg.)

that were established for wines, for which no March, 1942, ceiling more favorable in amount than the so-called flat ceilings, was available; in Amendment No. 3 to MPR 445, effective in October, 1943, the Office of Price Administration came out with flat ceilings for both bulk and case goods. Now, the relationship was substantially as follows: the bulk ceilings recognized two classes of wine, current wines and non-current wines. The ceilings for red and white current wines were 28c per gallon for red and 33c per gallon for white. [415]

Q. And again I want to ask you, if anybody had a higher March, 1942, ceiling they could still use it, couldn't they?

A. Yes. The ceilings for non-current red and white wines were 40c per gallon for red and 45c a gallon for white.

Q. Did you define what current wine was?

A. I was about to do that, Mr. Marcussen. Perhaps the best way to do that is to take ourselves back to October, 1943. The regulation prescribed by definition that any wines produced in the 1942 or 1943 selling vintage seasons were automatically classified as current wines; any wines produced prior to 1942 were automatically classed as non-current wines. Now, it was permissible, under the definitions to which I referred, to blend wines of two or more of those years, and if at least 51 per cent of the blended wines consisted of wines produced in 1941 or earlier, even though 49 per cent

(Testimony of Louis R. Gomberg.)

in the blend were 1942 wine or 1943 wine, it was still non-current wine.

Q. Subject to the higher ceilings?

A. Subject to the higher ceilings to which I referred a moment ago. Now, in addition to the bulk ceilings, case goods ceilings, bottled wine ceilings also were established for the first time.

Q. That is, the flat ceilings?

A. Flat ceilings, and there was a marked disparity in the return to the wineries for the wine as between the flat bulk ceilings and the flat bottled ceilings. [416]

Q. How were the bottled ceilings arrived at?

A. The bottled ceilings were arrived at by taking the flat ceilings for the bulk wine and then adding to those ceilings certain elements of cost, including the bottles, cartons or cases, labels, caps, corks, cello-seals——

Q. I don't mean to go into all that detail unless you think it is necessary, Mr. Gomberg.

A. Well, I am merely indicating that in addition to the bulk ceilings the OPA allowed certain elements of cost entering into the marketing of wine as bottled wine, as distinguished from the marketing of wine as bulk wine; selling and administration costs were also included in the case goods ceilings and an element of profit of approximately twice the amount percentage-wise was allowed for bottled wine and also entered into the ceiling price. The reason for twice the amount, as I recall it, the OPA figured a person who markets



(Testimony of Louis R. Gomberg.)

wine in bottled form is entitled, because he is taking a greater risk—under normal conditions he is entitled to a higher relative margin of profit than a man who just sells a tank car of bulk wine.

Q. Yes. And were there included in that any estimated costs instead of actual costs which had been incurred by the bottling industry at that time.

A. There were. There were elements of cost based largely upon representations by the industry.

Q. You are referring to what part of the industry? [417]

A. Well, naturally, it was that part of the industry that was particularly interested in the sale of wine in bottled form, because the man who sold only bulk naturally wasn't concerned in this particular problem directly. He was indirectly, of course, but directly the OPA looked to the man who sold wine in bottled form for information and guidance in building up the total ceilings for the bottled wine.

Q. Was there a committee that provided information to the OPA concerning these statistics?

A. There was.

Q. Do you know generally the composition of that committee?

A. I recall most of them, yes.

Q. How many were on the committee, approximately?

A. My recollection is there were nine members of that committee.

Q. And where did most of them come from,

(Testimony of Louis R. Gomberg.)

what particular segment of the industry were they affiliated with?

A. There were seven, I believe, from California, one from New York——

Q. I don't mean geographically, I mean segments of the industry; that is, between producers and bottlers?

A. The only bottler that I recall who ever served on that committee was a party from outside of California, from Pennsylvania. [418]

Q. The only bottler, you say?

A. The only bottler, as such.

Q. Now, with respect to the others, were they producers? A. They were all producers.

Q. And did those producers also bottle a substantial portion of their products?

A. At what time?

Q. At that time.

A. Yes, I would say that they bottled either all of it or substantially all of it; either themselves or indirectly through branches, affiliates and associates.

Q. And so far as you know, there was only one member of the committee who was a producer of wine alone and had no bottling facilities?

A. No, I didn't say that, Mr. Marcussen. I said there was one member of that committee who was a bottler. He was not himself a producer.

Q. I see.

A. I don't recall anyone on that committee, I don't recall anyone who was strictly a producer

(Testimony of Louis R. Gomborg.)

and seller of bulk wines only. I don't recall that. I am pretty sure there was no one on it.

Q. Now, prior to the war, can you tell the court approximately what percentage of the wine was sold by producers as bulk wine and what percentage was sold in case goods, by the [419] wineries themselves?

A. Are you speaking of California wine?

Q. Yes.

A. Yes. In my opinion, based upon a number of surveys made from time to time over the years—the exact figure has never been ascertained and would not have been possible to ascertain except by an exhaustive examination of the books and records of each individual winery. That was never done, to the best of my knowledge, but approximations were possible and my recollection is about 80 per cent of all the wine sold by California wineries, prior to the war, say, up to about 1940 or 1941, was sold by the wineries in bulk.

Q. Now, beginning with the latter half, latter quarter or latter part, shall we say, of 1943 and thereafter, can you state approximately what percentages of wine were sold in bulk form and what percentage was sold in case goods form?

A. I should like to point out two things in that connection before I answer your question, if I may.

Q. Very well.

A. It is important to bear in mind not everything in the wine industry that is sold in bulk is shipped in bulk, or vice versa; in other words, wine

(Testimony of Louis R. Gomberg.)

may be shipped in bulk but sold as case goods, or it might be sold as case goods and shipped in bulk. That is one point to bear in mind.

Q. Well, I am not thinking now of technical shipments [420] in actual transportation of wine. I am thinking of sales in wine, in connection with what the actual contract would be between the producer and the party to whom he sold.

A. Between 1942 and in the period from 1942 to 1943, a remarkable transition occurred. I mentioned a moment ago it is my opinion about 80 per cent of all the California wines sold prior to 1942 were sold and shipped in bulk, but during that transition period, with the scarcity of wine growing more acute practically day by day, less and less wine began to be sold in bulk. That was especially true in the summer and fall of 1942, in anticipation of the first special OPA regulation governing wine ceilings. When the ceilings came out in November of 1942, the first ceiling, there were some sales in bulk, because prior to that time—let me give, if I may, dessert wine as an example, because it is by far the most common form of wine sold in California. Dessert wine, or sweet wine. The highest price that was charged under the May freeze of the OPA regulations was about 32c a gallon for most, not all, but most, of the sweet wines.

Q. In bulk.

A. In bulk, and under the first amendment governing wine ceilings in November, 1942, the OPA regulations, per formula mentioned a moment ago,

(Testimony of Louis R. Gomberg.)

allowed the price to go up to 51 and a fraction cents per gallon. It was 39 cents plus a maximum increase permitted of just double the amount of dry wine, because [421] it takes two gallons of dry wine to make one gallon of sweet wine. The maximum price that could be charged under that amendment in 1942 was 51 and 2/10 cents, I think, but that was substantially higher than the 32 cents which was for most people the maximum price they could charge between May of 1942 and November of 1942, so the result of that was to allow some wine to move in bulk and into the channels of trade.

Q. You mean as far as sweet wine is concerned?

A. Yes, and dry wine too because the frozen price previously on dry wine was a net retail of 17 and a half cents. It wasn't exactly correct, but that was what OPA announced that it was, and the maximum that could be charged under this governing regulation was 28 cents, a fraction under, but approximately 28 cents. However, on November 15th or 20th, approximately, the OPA announced—

Q. What year?

A. 1942. The OPA announced, effective November 25th if my recollection is correct, there would be no ceilings on unfinished bulk wine sold interwinery, within the state of production. As the result of that, considerable quantities of wine, bulk red wine, white wine and sweet wine, moved interwinery between that date, between November 25th, 1942, and February 15th, 1943. Early in February,



(Testimony of Louis R. Gomberg.)

I think it was about the 1st or 2nd of February, OPA announced that that exemption for unfinished bulk wine in California or in any state, inter-winery [422] the state of production, was being terminated and that effective February 15, 1943, the ceiling would be put back on, so there was an upsurge in the movement or sale of bulk wine, at least inter-winery, and I dare say, other than inter-winery, on the basis that some of the bottlers—some bottlers operated bonded premises but were not actually bonded wineries in the strict sense—

Q. Well now, with respect to that announcement and regulation, I take it it was by regulation OPA made that ruling?

A. That is correct. The first one, as I remember it, was Amendment 41 to the GMPR, Amendment 41, and I am referring now to the unfinished wine, lifting the ceiling on unfinished wine, and it was—the ceiling was restored under Amendment 105, I believe it was.

Q. In February?                   A. In February, 1943?

Q. Did that 105 contain any provision with respect to the relative ceilings for finished and unfinished wines?

A. Yes, that regulation said that the ceiling on unfinished wine shall not exceed the ceiling on finished wine. You see that was a time there between November 25th of 1942 and February 15th, 1943, when the sky was the limit on unfinished wine, so it was necessary to impress on the industry regardless of what had happened during the preceding

(Testimony of Louis R. Gomberg.)

nine weeks that the ceiling was back on unfinished wine and nobody could charge more [423] for unfinished wine than for finished wine. That caused, of course, this flurry of inter-winery sales to subside. However, the trend away from bulk wine sales and toward bottled wine sales continued unabated during the remainder of 1943. It is my recollection that by the end of 1943, the last two or three months of 1943, that sales of California wine in bulk had all but ended. There were a few minor exceptions, but all of those exceptions, I believe, had reasons——

Q. What were those exceptions?

A. Well, one that I recall in particular was in the winery out here which decided that it would be advantageous to sell stock in the winery to about four or five bottlers to whom it had previously sold bulk wine. That stock was sold, and my understanding of the agreement is—I have never seen it personally, but I know the authors of the agreement intimately—my understanding of the agreement is that it provided that the stockholders would be entitled to a certain percentage of wine each year under the agreement, as long as they held the stock. As a result of that, there were sales by the corporation out here to the bottling corporation in the east at the ceiling prices for bulk wine, but——

Q. Those bottlers being the stockholders of the corporation?

A. Yes. Apart from that exception, and conceivably a few others with which I am not personally

(Testimony of Louis R. Gomborg.)

familiar, apart from [424] that in my opinion there was no such thing as any sale of bulk wine by the end of 1943. May I add to that this qualification, that there was no sale of bulk wine at the bulk wine ceilings by the end of 1943. Now, naturally, I and anyone else who had an intimate knowledge of the wine industry during that period know there were sales of wineries and wine inventories and that also there were sales, there were production deals whereby the producer out here made wine for the account of the bottler and shipped him wine. There was no sale, of course, in that type of situation.

Q. Yes. Now, with respect to—well, you said I think—How was the wine marketed beginning with the last three months of 1943 and continuing from there?

A. The average price paid for grapes for crushing in California in 1942 turned out to be \$30.30 a ton. The OPA had made an allowance in its ceiling regulation of 1942—that was Amendment 54 to which I referred—for a maximum of \$28.20. Therefore, the ceilings were not high enough to accommodate the price actually paid for grapes for crushing in the 1942 season, the ceilings established for 1942. That was one of the reasons, one of the principal reasons, why wine was not sold, or I should put it the other way, that wine was sold in decreasing volume, in bulk, during the early months of 1943, the early and middle months of 1943.

Q. With the exceptions you mentioned during

(Testimony of Louis R. Gomberg.)

that period [425] of time when the ceilings were off, I take it——

A. Well, that was limited to inter-winery sales in California. I was referring here to sales to the bottling trade primarily. I believe I forgot the rest of your question.

Q. Well, I will ask another. What were the marketing practices, or shall I say, how was the wine sold by the winery to the trade beginning in the latter months of 1943 and continuing on?

A. Well, I think I will have to carry you back just a little bit to present the whole picture.

Q. All right.

A. As 1943 progressed, it became increasingly obvious that wine could not be sold in bulk at a profit. The ceilings established in 1942 were too low for one thing, the demand was terrific for another thing. The problem of what price would have to be paid for grapes in 1943 became increasingly acute as the vintage season approached. Due to the scarcity of grapes for crushing and other considerations, the price paid for grapes for crushing in 1943 turned out to be on a statewide basis \$79 per ton, as compared with \$30 for a ton in 1942 and \$20 a ton in 1941, and, to complete the picture, a low of \$11 a ton in 1948—1938, pardon me.

Q. How high did it get in 1944?

A. In 1944 it reached \$108 a ton. Inflation in the industry, in that branch of the California industry devoted to the [426] growing of grapes for crushing, in my studies, proved to be about as

(Testimony of Louis R. Gomberg.)

unbridled as in any—certainly any manufacturing industry, and I dare say any agricultural industry in this country during the war period.

Q. By the way, right at this point I want to ask you whether OPA came out with any regulations increasing the flat ceilings for bulk wine after MPR 445, Amendment 3?

A. Yes, they came out with another amendment in December of 1944. It superseded Amendment No. 3 to MPR 445.

Q. What ceiling did it provide?

A. It provided for ceilings of 88 cents for bulk red wine, \$1.01 for bulk white wine, and \$1.42 for sweet wine.

Q. When were those ceilings effective?

A. December 21, 1944.

Q. They were not made retroactive, so far as you know?

A. No. That second increase in the ceilings for bulk wine was in recognition of OPA's regrettable decision to allow grapes for crushing to remain outside the scope of price control. In other words, having left the door open, so to speak, for prices for grapes for crushing to run wild there was nothing OPA could do but make allowance for that by adjusting the wine ceilings accordingly. However, the ceilings were adjusted a year later.

Q. Excuse me.

A. I was just about to conclude the sentence. The ceilings [427] were adjusted a year late, and for that reason it became necessary to resort to



(Testimony of Louis R. Gomborg.)

other available means of recapturing costs and coming out at least at a break-even point, if not at a profit point.

Q. Now, a moment ago you were describing the condition that was beginning to develop in the early part of 1943, and I think you stated that it was obvious that producers could not sell bulk wine at a profit in view of their grape costs.

A. That's right.

Q. And that there was a decrease in the volume of wine that was sold in bulk. What did the bottlers do, if anything, under those conditions in order to secure stocks of wine?

A. As the supply of bulk wine began to dry up, one of my responsibilities at the Wine Institute was to placate unhappy bottlers.

Q. By supply, what do you refer to, physical supply or failure on the part of wineries to sell?

A. Well, at that time, in 1943, I would say it was some of both. There was a shortage of wine per se and in addition there was a reluctance to sell at the bulk ceilings.

Q. What about the 1942 crush, was that a good crush?

A. No, the 1942 crush was one of the shortest crushes in a number of years.

Q. By "short" you mean low volume?

A. Low volume crush. The supply of wine available for [428] market in 1943 was short.

Q. Go on, if you will, with what the bottlers did about this situation.

(Testimony of Louis R. Gomberg.)

A. The bottlers started telephoning and wiring out here, asking for assistance in locating supplies of wine. When that failed, as it did in most instances, the horde started coming out, and as I recall at one time I had as many as fifteen or twenty bottlers call on me in a few days' period, pleading with me to help them find supplies of wine. Of course, it was beyond my power to assist them, except to console them and do what I could to prevail upon wineries that could afford to do so to part with some wine in bulk. However, that situation proved to be impossible, because the ceilings were so low.

Q. Did you say impossible or possible?

A. That proved to be impossible, to get many wineries to part with much wine, because the bulk ceilings were so low that they just didn't make sense in relation to reality; so, as the year progressed, it became obvious that some way, some method had to be found to compensate for OPA's failure to establish ceilings on grapes for crushing. Such a method was found. I do not know exactly how it began, but I do know it did begin and that method, I am speaking now not of the sale of the winery in connection with an inventory, but the sale of wine——

Q. By the way, during 1943, did the bottlers purchase [429] any wineries?

A. Oh, indeed. There were many purchased.

Q. With their inventory?           A. Yes.

Q. Do you know of any situations during that

(Testimony of Louis R. Gomberg.)

time where a bottler came out and purchased a winery without a wine inventory—I beg your pardon, yes, a wine inventory?

A. I have no personal recollection and I would seriously doubt if it ever happened in that period.

Q. This great number of bottlers that came from the east, and referring now to their purchases of wineries, did they say anything to you about those transactions? A. Yes.

Q. Generally, what did they say, what was their purpose in coming out? A. To find wine.

Q. Were they willing to buy the winery in order to get the wine at that time?

A. Yes, a number of them were and did buy wineries.

Q. And approximately, during that, during the year 19—well, beginning in the latter part of 1942 and on into and through 1943, approximately how many wineries were sold with an inventory of wine; do you have any idea at all?

A. I would estimate somewhere in the neighborhood—what period are you referring to? [430]

Q. Well, any period. Give us an estimate.

A. Well, I would say the purchase of wineries in order to acquire inventories began intensively in the fall of 1942, and reached its peak in 1943, and there were many sales, however, in 1944 as well. Those three years, 1942, 1943 and 1944. There were also some in 1945, but not so many. I would say that in the three year period, 1942, 1943 and 1944, that there were at least fifty to sixty sales

(Testimony of Louis R. Gomberg.)

of winery properties, including inventory, representing—and this is interesting, I think—representing well over half of the entire volume of the industry.

The Court: We will take a recess.

(Recess taken.)

The Court: Proceed.

Q. (By Mr. Marcussen): By volume, you meant production volume, did you?

A. Well, what—

Q. What did you mean?

A. Well, I meant production volume and inventory, storage capacity and sales volume all in one, because substantially the storage capacity of the winery measures its production capacity, its inventory capacity, and eventually its sales volume.

Q. Well, you say by volume; you meant, then, the available supply at that time, is that correct?

A. Yes. [431]

Q. Are you able to break that figure of approximately sixty sales of wineries and with an inventory of wine down, so as to give us a figure for—covering 1942 when it began and the year 1943—if you know, if you have the information or if you could approximate it at all.

A. I can approximate it roughly. About ten or fifteen in 1942, and about twenty or twenty-five in 1943, and the balance in 1944.

Q. Now, a moment ago I asked you what the wineries—I beg your pardon—what the bottlers did about the situation in order to get stocks of wine.

(Testimony of Louis R. Gomborg.)

You have described the purchase of wineries with their inventories. Will you describe the other transaction, or transactions, that were used in order to effectuate the sale of the wine in bulk from the winery to the bottler?

A. Well, there were three methods altogether and I am not including slight variations of the three methods. The three primary methods—Number one was to buy a winery with wine in it; number two was to make an agreement with the producing winery out here whereby the bottler would acquire a supply of wine by advancing the money for grapes, or making other suitable arrangements to the same effect and thus acquiring the production of that winery, in whole or in part.

Q. Were the grapes in that transaction crushed for the account of the bottler? [432]

A. More often than not they were, yes.

Q. Did the OPA establish ceilings with respect to those services of crushing? A. They did.

Q. What is the next, the third method?

A. The third method was what came later to be known as contract bottling or franchise bottling.

Q. Will you describe that, please?

A. In substance, that method consisted of the following steps: The bottler would come to the winery and say, "If you will deliver me wine, I will bottle it for your account. You pay me a fee for the bottling service and then I will buy the bottled wine after I bottle it for you." In that type of situation the winery would retain title to the



(Testimony of Louis R. Gomberg.)

wine until it was bottled by the bottler, then title would pass. At that time the winery would bill the bottler for the wine as bottled, charging him the maximum prices authorized for bottled wine by OPA, and then subtract the bottling service charge, which incidentally was not prescribed in dollars and cents under the OPA regulation at all times; OPA merely provided the charge for the bottling service was not to exceed the maximum charge for that service by the person performing that service in March, 1942, and if he did not perform that service in March of 1942 and did not offer to perform it, then he was permitted under the general provisions of the GMPR to use as ceiling for that service the [433] highest price charged for a similar service by his nearest competitor. Actually, and as a practical matter, it developed in the wine industry that a dollar a case became the usual and customary charge for bottling. However, at one point, during the acute shortage period in 1944—I have personal recollection of an instance where the bottler was so anxious to get the wine he charged the winery out here only 30 cents a case, and there were other instances too of below ceiling charges for the bottling service.

Now, the practical effect of that, Mr. Marcussen, the practical effect of that method of selling wine was to enable the winery to get back for the wine an amount substantially higher than the bulk ceiling for the wine, the same wine.

Q. Did that practice, do you know, result in

(Testimony of Louis R. Gomborg.)

any increase to the cost of wine, shall I say, or price of wine to the consumer?

A. No, it did not.

Q. Will you explain your answer, please.

A. OPA regulations, in effect from 1943 on, early 1943 on, permitted the wholesaler and the retailer to mark up over costs, to mark up their purchases of wine and liquor at prescribed percentage limits. The cost to the wholesaler was not to exceed the maximum prices established for the processor of the wine, which processor was meant the person who either sold the wine in bulk, if it was sold in bulk, or who bottled the [434] wine and then sold it to the wholesaler, so under that so-called contract or franchise bottling system the maximum amount that either the winery could charge the wholesaler if the winery did the bottling or the bottler could charge the wholesaler if the bottler did the bottling, the maximum amount that could be charged in either case was identical, so it simply became a question as to who would obtain the return, the allowance for the wine within the case goods ceiling, was it the winery or was it the bottler.

Q. A redistribution of profits, of the total profits, on the sales of the wholesaler?

A. Yes. Since the winery took the risk of reselling the wine at a price to return at least its grape cost, it was my feeling then, and my opinion has not changed, of the two the winery certainly was entitled to the profits between the winery and the

(Testimony of Louis R. Gomberg.)

bottler, because the bottler could always, and did in fact, either himself become the distributor or wholesaler of that wine and take his margin on the resale to the retailer, or if his business permitted he would resale to wholesalers and split the wholesaler mark up with the other wholesaler. That was permissible under the OPA regulations.

Q. Do you know whether during the years 1943 and 1944 when this contract bottling practice was resorted to in the wine industry, do you know whether the OPA during that time ever issued any announcement or rule or regulation or gave any [435] indication that that practice was legal or illegal?

A. Your question was do I know? Yes, I do know.

Q. Yes. Will you inform the court, please.

A. When my attention was first called to this practice of contract or franchise bottling, which was in the fall of 1943, it was my duty and I did in fact communicate with the Office of Price Administration, Washington, D. C., to ascertain whether there was any objection to the practice, or to that method of selling.

Q. Did you finally obtain a ruling?

A. I did. The ruling was an oral one, as were most of the rulings in that period because of the great number of problems and questions that were referred to the Office of Price Administration for ruling, and the ruling was that that method would not be interfered with.

(Testimony of Louis R. Gomberg.)

Q. How was the ruling obtained?

A. It was either in a long distance telephone call by me to the Washington, D. C., representative of the Wine Institute and thence by him to the Office of Price Administration, or it may have been in a telegram. I am not certain how it was transmitted.

Q. Now, from time to time were there any publications in the wine bulletins with respect to this practice of franchise bottling?

A. There was a report of franchise bottling, as I recall [436] it it was either in late 1944 or early 1945.

Q. You were familiar with the practice when it began, were you?

A. Approximately at its beginning, yes.

Q. What date is that again?

A. It was in October or November of 1943.

Mr. Brookes: Excuse me, Counsel. I didn't understand what you were asking him and what his answer was. What was in October and November of 1943?

The Witness: The practice.

Mr. Marcussen: The practice began.

Mr. Brookes: You were not asking him about the bulletins?

Mr. Marcussen: No, not about the bulletins.

Q. (By Mr. Marcussen): Now, can you explain why—well, was any mention ever made in bulletins about this practice in 1943 or 1944?

A. I don't recall that it was mentioned in 1943;

(Testimony of Louis R. Gomberg.)

it was mentioned in either the latter part of 1944 or the early part of 1945.

Q. Was that after or before you obtained this ruling?      A. Oh, long after.

Q. Quite some time after?

A. Quite some time after, yes.

Q. Can you explain the absence, in your bulletins, of [437] information concerning this practice?      A. Yes, I think I can.

Q. Will you do so, please.

A. The practice was obviously an effort to compensate for a deficiency in the regulations. There was no specific reference in any of the regulations to this particular practice of contract or franchise bottling. There was, however, a provision for the service of bottling wine. It was my feeling then, and the opinion of many attorneys with whom I discussed the matter, that although there was no specific authorization for that practice, neither was there a specific provision against it. When it was submitted to OPA—

Q. Excuse me. Did you give legal advice at all in these bulletins?

A. No, no. The information imparted in the bulletins was and is, or at least it was until I left the Institute in 1948, of a purely informational character. When anyone would ask for legal advice or information, an opinion as to some right or responsibility, he was advised to consult his attorney.

Q. Did the industry members make any inquir-



(Testimony of Louis R. Gomberg.)

ies in 1944 about this—or, in 1943 and 1944—about this practice?

A. Yes, they did; many of them.

Q. And did you explain it to them?

A. I did.

Q. Do you know whether or not it was spread quite rapidly in the wine industry? [438]

A. It is my recollection that the information and news about methods of marketing, yes, did spread rapidly.

Q. Now, I would like to have you describe for the court generally what classifications, marketwise, that the wine produced in California falls into.

A. The wine produced in California falls very generally into two classifications, so-called premium priced wines and popular priced wines. Now, it can be appreciated that not all wine is precisely in either one group or the other. There are variations, varying from very high priced premium wines down to low priced premium wines and similarly from relatively high priced popular priced wine to very low priced popular priced wine. By and large, the price of the wine determines or bears a relationship to its quality. The relationship is not a necessary one, however.

Q. Yes. Now, I would like to ask you with respect to that, were those terms used in the industry at all?

A. Those terms have been used in the industry to a large extent since about 1940 or 1941.

(Testimony of Louis R. Gomberg.)

Q. Can you tell the court how they came to be used?

A. Yes. It was one of my responsibilities to conceive and disseminate information about the wine industry that favored the industry, in preference to dissemination of information that was to the disadvantage of the industry. Prior to that time, wines were commonly known as fancy wines or fine wines on the [439] one hand and ordinary wines or standard wines on the other hand, and it was my feeling that the term or terms ordinary wine or standard wine did not do justice to the wine; that a better term could be found, and so I recommended, and the term was adopted and is now quite widely used, of popular priced wines, which do not bear any necessary connotation one way or the other as to their quality, whereas ordinary and standard wines do bear an unfavorable reference to quality. On the other hand——

Q. Excuse me just a moment. You don't mean to say as distinguished between premium priced wines and popular priced wines?

A. No, these terms were mutually independent, each one standing on its own feet, so to speak.

Q. In other words, the terms standard wines and ordinary wines had objectionable connotations as far as the industry was concerned?

A. For public relations reasons, yes.

The Court: Just why is it beneficial for the court to know this?

Mr. Marcussen: If Your Honor please, it is

(Testimony of Louis R. Gomborg.)

necessary in order to give Your Honor a background with respect to this material and also in connection with the cross-examination of Mr. Brookes of Respondent's Witness Mondavi yesterday, to explain the—he went into the qualities of the wine and the [440] types of wine, and I just merely want to describe generally what they were.

The Court: We do not have the problem here of the bottled wine, or, if you want to use that term, of circumventing; we do not have here the problem of adopting that means of getting away from the ceiling price, it seems to me. This has all been very interesting. It certainly has all been very new to me. I am interested, but I am not sure we need all this background in order to get down to the kernel of this controversy here.

Mr. Marcussen: Your Honor, this is all by way of leading up to an explanation of the situation in Napa County that was brought out by counsel, and I think there—you see, where franchise bottling—the evidence will show ordinary wines were bottled under that method, and as indeed they had been before. By ordinary wines, I mean what the witness has described, has designated as popular priced wines, and there was a considerable amount of material brought out by counsel in an attempt to show, in the impeachment of the witness Mondavi yesterday——

The Court: I want you to get everything in that is material or that you want to put in, but I do not want to take up too much time on general

(Testimony of Louis R. Gomborg.)

educational matters. This case is going to close this afternoon.

Mr. Marcussen: Yes, indeed it will. [441]

Mr. Brookes: I want to refresh your recollection.

Mr. Marcussen: Certainly.

Mr. Brookes: I think counsel has forgotten, both on direct and cross Mr. Mondavi testified that what he referred to as their competitive wine was sold under this contract bottling method and he identified their competitive wine as being wine of the lowest grade they made, which was a year or less old, and certainly the category you have been at some pains to define would not come under that title.

Mr. Marcussen: Notwithstanding your present statement of your understanding of his testimony, you went into considerable lengths in developing the quality of wines sold in Napa—produced in Napa County and also sold by that county. It seems to me I must make a broad——

The Court: Go ahead. I just wanted to clarify it a little. I hope you confine it to material matters.

Mr. Marcussen: I certainly will, Your Honor. I want to explain—the background is over with now. I will ask the witness a number of questions pertaining to specific information in the industry and in the trade and which will have a definite bearing on the testimony that has already been brought out in the case, the background is over.

The Court: Keep him down to the testimony.

Mr. Marcussen: I am qualifying him as an ex-

(Testimony of Louis R. Gomberg.)

pert to testify as to the value of wine during that time. I will do that [442] very briefly. I might as well do that right away, and I would like to abandon my questioning, Mr. Gomberg, concerning the classifications of wines and ask you whether, based upon your experience in the wine industry, you have an opinion as to the value of bulk wine in—dry wines in December of 1943?

The Witness: Yes, I do.

Q. (By Mr. Marcussen): Will you state for the court what, in your opinion, was that value?

A. In my opinion, the value, the market value of bulk dry wine in—did you say 1943?

Q. December, 1943.

A. In December, 1943, it was approximately \$1.00 a gallon.

Q. And what is that opinion based upon?

A. That opinion is based upon a personal knowledge of how the OPA ceiling for bulk—for bottled current wines were constructed.

Q. Yes. You were aware of the ceiling?

A. Yes, and if you will compute back from the bottled wine ceilings for current red wine, for example, effective in October of 1943, if you will compute back and make allowances for the actual cost incurred by, let us say, the average winery—

Q. You mean winery or bottler? [443]

A. The average cost incurred in connection with the bottling of the wine, whether it is done by the winery or the bottler, you will come up in round numbers with about a dollar a gallon. You can get



(Testimony of Louis R. Gomberg.)

as low as 75 or 80 cents a gallon and as high as \$1.25 a gallon, depending on the amount of allowance you make for each element of cost.

Q. Do you know whether or not, in order for a winery to dispose of its wine by contract bottling it was necessary for him to have any long standing connections in the various distribution centers of the country or any connections at all?

A. It was not.

Q. Explain that, please.

A. Well, the demand for wine was so great in this period that bottlers came out here from the east and middle west and scoured the countryside, hired an automobile and drove from winery to winery to locate the supply of wine. That being the case, it was not difficult at all; in fact, all the winery proprietor had to do was wait in his winery and someone would call on him sooner or later, mostly sooner, and ask him if he wanted to dispose of his wine.

Q. Were there any other practices or types of marketing practices you had in mind in giving that opinion as to the value of wine?

A. Any other marketing practices?

Q. Yes. I am referring now to the purchase of a winery [444] with its entire stock of wine.

Mr. Brookes: Your Honor, I object to the question. I think it is somewhat leading.

Q. (By Mr. Marcussen): I will ask you, are there any other marketing practices—by marketing practices I refer to practices of the bottlers in

(Testimony of Louis R. Gomberg.)

seeking stocks of wine—are there any other practices upon which you base your opinion?

A. Other—in addition to what?

Q. Than franchise bottling?

A. Oh, I beg your pardon. Well, I mentioned the purchase of the winery with the wine. I mentioned the production of wine for the account of the bottler, and that there is a contract or franchise bottling—

Q. The second one, of course—would the second one have anything to do with your opinion?

A. As to the value?

Q. The value of the wine.

A. No, because I understood your question to be how were bottlers able to get wine during the shortage period.

Q. What is your opinion based upon, your opinion wine was worth a dollar a gallon in 1943?

A. It is based upon the reflected return to the winery for the so-called flat case goods ceilings established by the OPA in October of 1943. [445]

Q. And upon what marketing practices, what marketing practices was it based upon—franchise bottling?

A. I would say primarily upon franchise bottling.

Q. Is it based upon the bulk sale of the wine and the winery at all?

A. The bulk sale of the wine with the winery?

Q. Yes.

A. No it is based upon the amount of money

(Testimony of Louis R. Gomberg.)

that the winery could get for the wine in the form of bottled goods. We know that the ceilings on bulk were so low the winery could not afford to sell in bulk, and under OPA ceilings stay in business, so the only method the winery had to market its wine in a manner consistent with OPA regulations by which one could measure the market value of the wine was contract or franchise bottling. That, in turn, enabled one to ascertain what the market value was or would have been in the event a winery had been sold along with the wine.

Q. Yes. And are you familiar, do you know generally the type of—are you familiar generally with the type of transaction involved in the purchase and sale of a winery with the wine inventory, during this period of time?

A. Yes, I am familiar with it.

Q. Do you know whether or not, have you any opinion as to what price for the wine is reflected in such sales?

Mr. Brookes: Your Honor, I object. He is cross-examining his own witness now. He asked the same question either two or three times and has received specific answers.

The Court: I think he has rather intruded upon the petitioner's province here. Maybe you may not have to cross examine. Maybe we can save time this way. I will overrule the objection to the question.

Mr. Marcussen: Will you read that last question, please.

(Question read.)

(Testimony of Louis R. Gomberg.)

The Witness: Yes, I do have an opinion.

Q. (By Mr. Marcussen): What is that, what price do you have in mind?

A. The same price, one dollar a gallon, more or less, as in the case of the sale of the wine by the so-called franchise or contract bottling method.

Q. Were you having any difficulty understanding my preceding question with respect to the basis of your opinion?

A. I misunderstood you, Mr. Marcussen. I understood you to ask, entirely apart from any other consideration, what would the price of the wine be and what would the price of the plant be, or what would the price of the wine be in the sale of a winery with its inventory.

Q. Yes.

A. I explained now that the yardstick in determining the market value of the wine sold in combination with the winery [447] would be what the winery could get for the wine by that method, or by any other method of marketing.

Q. Yes. Now, returning——

Mr. Marcussen: If Your Honor please, I am at a breaking point, if Your Honor would like to take a recess.

The Court: Well, what time is it?

Mr. Marcussen: I think it is 12:30, Your Honor.

The Court: All right. We will adjourn until 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p.m.) [448]

Afternoon Session—2:00 p.m.

The Court: Proceed.

Mr. Marcussen: Will you take the stand, please, Mr. Gomberg.

Whereupon,

LOUIS R. GOMBERG

was called as a witness on behalf of the Respondent, and having been previously duly sworn, testified as follows:

Direct Examination—(Resumed)

Q. (By Mr. Marcussen): Now, you were describing generally the two classifications of wine this morning, premium priced wines and popular priced brands. Will you describe—I think you described the general price situation with respect to those. I want to ask you about the quality of the premium wines as distinguished from popular priced wines.

A. Well, on the whole, quality of the premium priced wines is markedly superior to the quality of the popular priced wines.

Q. Yes. Now, during 1943 and at any other time that you wish to give an answer with respect to that, generally what is the percentage of premium priced wines and popular priced wines that is sold in California—from California products?

A. Generally the percentage of premium priced wines is about 5 per cent or less, and popular priced wines are the remaining 95 per cent or more. [449]

Q. This morning, do you recall whether you described the term “current wines” as it was used



(Testimony of Louis R. Gomborg.)

by the OPA? A. I believe I did.

Q. Did you identify the age of current wines?

A. I did, by illustration, I believe.

Q. Do you know it by months?

A. Well, in practical effect, it amounts to a maximum of eighteen months——

Q. Well, in fact——

A. For current wines.

Q. Is that not the definition of the OPA, as a matter of fact?

A. It is, from one standpoint, and the actual year of the wine is from another standpoint. If the OPA regulation that invoked that definition had gone on for many years, eighteen months would have become the yardstick, but at that time it defined any wine produced in 1941 or earlier years as non-current wine, and any wine produced in the 1942 or 1943 seasons as current wine, except to the extent of the blending which I described this morning.

Q. Yes. Was there not a phrase of eighteen months used in the definition of wine under the OPA?

A. That was the simple method of referring to the difference between current wine and non-current wine; the wine that was eighteen months or older was entitled to non-current [450] wine designation; under eighteen months, current wine.

Q. Eighteen months was specified in the regulations, was it, or was it not, that you recall?

A. It is my recollection eighteen months was

(Testimony of Louis R. Gomberg.)

referred to in the interpretations and in conversations pertaining to the OPA regulations, but the actual definition of current wine was as I described it this morning.

Q. Do you have it there with you if counsel should be interested in it?      A. Yes, I do.

Q. Now, were you here in the courtroom upon the cross-examination of Mr. Mondavi yesterday?

A. I was.

Q. Do you recall—did you listen to the cross-examination pertaining to the difference between Sonoma County wine and Napa Valley wine?

A. I did.

Q. Can you state whether there is any difference between wines produced in those two counties, referring to wine that would be sold under popular prices?

A. Basically there would be no difference, provided, of course, that the circumstances of the products were similar; for example, produced from the same variety of grapes, produced by the same or substantially the same production techniques and so forth—there would be no observable difference.

Q. In any event, whether there would be any difference in quality or not, do you know whether or not there was any difference in price between popular priced wines from those two counties?

A. At what time, Mr. Marcussen?

Q. During 1943 and 1944?

A. To the best of my knowledge, there was no difference.

(Testimony of Louis R. Gomberg.)

Q. Now, do you know whether in the latter months of 1943, including December, 1943, there was any difference in the market price or market value between finished and unfinished wines?

A. What was the first part of your question?

Mr. Marcussen: Will you read it, please.

(Question read.)

The Witness: I do know the answer to that, yes.

Q. (By Mr. Marcussen): Will you state it, please.

A. The answer is there was no difference.

Q. How do you account for that?

A. In this way: the OPA ceilings on bulk wine were identical for finished wine and for unfinished wine. With respect to bottled wine, bottled, for example, under the franchise or contract bottling method or any other way, for that matter, but particularly under the franchise or contract bottling method, the buyer of the wine, the bottler, was so anxious to get the wine that if the wine did not have—was not finished, he would [452] make allowance for the finishing, which is a relatively small—two and a half cents was the OPA ceiling in the return to the winery. If the bottler had finishing facilities of his own, as often as not, in the case of wineries that did not have finishing facilities, he, the bottler, would finish the wine and that was considered purely incidental.

Q. Subject to that qualification of two and a half per cent, there was no substantial difference?

(Testimony of Louis R. Gomberg.)

A. Two and a half cents.

Q. What did I say?

A. You said per cent.

Q. I beg your pardon. There was some testimony here yesterday about lees, and concerning particularly lees in Mr. Particelli's wine. Can you state what the maximum allowable shrinkage is as determined by the Alcohol Tax Unit, or under the Alcohol Tax Laws and Regulations for wine that has just been produced?

A. Yes, I can.

Q. Will you state that?

A. 6 per cent.

Q. 6 percent per year?

A. Yes. That is on new production, for the first year.

Q. What is it in succeeding years?

A. 3 per cent.

Q. What does the 6 per cent include? [453]

A. The 6 per cent includes losses due to leakage, evaporation, and the presence of the lees, which, of course, become a substance other than wine when the wine is raked, finally raked.

Q. The lees, I take it, are the dregs?

A. That is correct.

Q. And do you know what the maximum percentage—what is the percentage, both in terms of average maximums and any way you wish to state, what is the percentage of lees in wine?

A. I can best answer that question by describing the method of arriving at the answer. After wine is crushed and fermented, it is then removed. The wine, the liquid, is removed from the fermenter.

(Testimony of Louis R. Gomborg.)

In the removal naturally some of the solid particles which were present in the original juice and must—that is the name for the juice—and the pulp and the skins and the seeds, some of the solid particles are carried off in the storage tank, where the wine is deposited for storage or whatever further treatment is to be given.

Q. Are there any dregs left in the crusher?

A. Oh, yes—not in the crusher, in the fermentation tank. The fermentation tank is full of residue, the residue consisting of skins, the seeds and the pulp.

Q. That is not the lees?

A. No, that is not the lees. That is called pomace. What remains in the fermenting tank after the clear wine is [454] drawn off is called pomace. The lees start depositing the moment the new wine is placed in a storage tank, and it is my opinion, based on personal observations and conversations with wineries over the years, that the lees account normally for somewhere between 1 and 2 per cent of the volume of wine deposited in the storage tank. I would say it would be about 3 per cent. Now, that opinion is underlined, so to speak, in connection with the Alcohol Tax Unit Regulation No. 7, governing the production of wine, which prescribes that the maximum loss of wine allowable without proof of special loss during the first year following production is 6 per cent, and that thereafter it is 3 per cent. That difference between 3 per cent in suc-



(Testimony of Louis R. Gomberg.)

ceeding years and 6 per cent the first year is to accommodate the lees.

Q. Now, can you state whether under the OPA regulations sales in 5 gallon demijohns and in barrels of any size, whatever the sizes are—and I would like to have you specify—whether such sales in barrels and in demijohns are regarded as bulk sales?

A. They were then regarded as bulk sales, that is correct.

Q. By the way, in the trade, what are the various sizes of barrels used for wholesaling of wine?

A. Nowadays very few barrels are used for sales of wine.

Q. How about in 1943?

A. In 1943 the sizes in use—and by the way at that [455] time barrels were beginning to become almost extinct—the barrels then in use were 50 gallons, normally; 50 gallons, 25 gallons and 10 gallons. The demijohn to which you referred is a container which, depending upon the particular use made of it, contains either 5 gallons or 4.9 gallons.

Q. Yes. Now, there was some testimony here yesterday concerning cooperage. What is cooperage and what are the various types of cooperage in use here in California and particularly in the north coast country?

A. The word “cooperage” is used in the wine industry in California as meaning a vessel or receptacle in which wine is stored or transported, or in the case of fermentation in which the wine is fermented. In other words, a vessel of some kind

(Testimony of Louis R. Gomborg.)

used for retaining wine for a short period of time, or a long period of time.

Q. Could you describe the materials from which they are made?

A. There are three types of cooperage used in the wine industry in California, used now and in 1943. There are some minor exceptions, but broadly speaking there are three types and were then. The most popular by far is the so-called redwood storage fermenting tank, made of what the average person might think of as redwood two by fours. Actually, they are not exactly two by fours, but they resemble two by fours. That is by far the most common. The next most common is concrete, [456] again used both for fermenting and for storage, concrete tanks; and the third consists of oak containers, ranging all the way from relatively large ones, standing perhaps 10, 15 feet high, down to very small ones. The smallest in normal winery use would be the 50 gallon barrel. The larger containers are called oak casks or oak ovals.

Q. Which of the three types you mentioned is the cheapest from the point of view of construction or cheapest from the point of view—well, cost obviously, and which is the most expensive?

A. The most expensive is the oak for many reasons.

Q. You don't need to give the reasons, Mr. Gomborg.

A. The least expensive—

Q. Which is the cheapest?

A. The least expensive would be redwood, de-

(Testimony of Louis R. Gomberg.)

pending upon age. If it is old redwood it would be least expensive. If it is broken down concrete, of course, it might be less expensive than some redwood.

Q. Well, now, you said old redwood. What do you mean by old redwood?

A. Well, redwood storage tanks have been used in the wine industry in California for close to a hundred years, and there are some almost a hundred years old still in use. If they are in good condition, it is my opinion those redwood tanks could be worth as much as relatively newer tanks in equally [457] good condition. I better illustrate that by the cost of cents per gallon. New redwood storage tanks cost about 10 cents per gallon now. Old redwood storage tanks, in poor condition, can be bought for as low as a cent or two a gallon. I would say probably the average condition, considering the average condition of redwood storage in California for wine, it is probably somewhere halfway between the 1 cent and 10 cents, about 5 or 6 cents.

Q. Now, are you familiar with the general yardsticks used in the wine industry for valuing a winery?

A. Yes.

Q. In what terms do they value it?

A. A rule of thumb method is cents per gallon of storage capacity.

Q. And will you state what, in your opinion— are you familiar with the general levels of values for wineries in the year 1943?

A. Yes.

Q. And are you familiar with the value before

(Testimony of Louis R. Gomborg.)

the war?           A. Yes.

Q. Will you state what the values generally were before the war?

A. Well, there has been a rule of thumb in the wine industry since I first became acquainted with it, that the value of winery property in the so-called dry wine producing regions, [458] where they do not have normally freezing equipment, refrigeration equipment, or pasteurizing equipment, or rather elaborate facilities, where they do not have stills and large boilers like they do in the central valley of California, the rule of thumb was about 10 cents per gallon. Now, that included not only the cooperage, which was normally redwood cooperage, like I described a moment ago, but it would also include the buildings and the land, of course, on which the building was situated and a moderate or minimum amount of equipment, such as a rough filter, naturally hose lines, perhaps a few pumps, maybe a small boiler.

Q. How about a crusher?

A. And a crusher.

Q. And after the war, what range of values was established for wineries, generally, in the wine industry?

A. By after the war, at what point?

Q. During the war, I should say.

A. During the war?

Q. Yes.

A. There was a rise in the value of winery properties during the war, just like there was of other

(Testimony of Louis R. Gomberg.)

properties. The extent of that rise I can not specifically and precisely determine but it would be my opinion that about a 50 per cent increase in value occurred during the war period. Roughly that would mean in a winery having a rule of thumb value of 10 cents [459] a gallon before the war, it could be expected to have a rule of thumb value of about 15 cents a gallon during the war.

Q. Now——

A. Mind you, I am speaking, Mr. Marcussen, not of new construction, because new construction went up to 20, 30 and 40 cents a gallon right after the war. I am speaking of construction existing before the war and its relative value during the war.

Q. Yes. Well, what about the—well, strike that, please.

Now, are you familiar with, in a general way, with the laws and regulations pertaining to the alcohol tax, Federal Alcohol Tax?

A. I am quite conversant with it, yes.

Q. You are familiar, are you, with the fact that stamps are placed upon the wine when it is sold?

A. I am familiar with the fact that stamps are placed upon the wine when it is sold and stamps are also disposed of in certain other ways when the wine is sold, yes.

Q. Do you know whether or not a person—a wine producer, how he may dispose of stamps other than by actual use?      A. You mean normally?

Q. Yes. Specifically I wanted to know may he return them, can he redeem them?



(Testimony of Louis R. Gomberg.)

A. They may be redeemed at the close of the winemaker's [460] operations if he terminates his bond, yes.

Q. And under what other conditions?

A. In certain cases loss by casualty; when there is a loss by casualty the stamps may be replaced under certain conditions.

Q. I am talking merely now about the redemption of stamps. How about denominations?

A. Well, for example, if a person has stamps of too high or too low a denomination for his practice, provision is made for exchange of stamps for a usable denomination, for a denomination that cannot be used in the normal course of the winemaker's business.

Q. Other than those two situations, are there any other situations under which wine stamps may be redeemed, so far as you know?

A. Not to my knowledge.

Q. Now, there has been a good deal of testimony offered here concerning bonded premises and shipments tax paid and under bond. Would you explain very briefly and generally what the situation is with respect to that?

A. Well, under the Internal Revenue Code when wine is produced the incidence of the tax applicable to the wine attaches. That appears when the wine attains one half of one per cent by volume of alcohol or more. For that reason the Treasury Department, Internal Revenue, bond premises for the production of wine, [461] the bond being used as an

(Testimony of Louis R. Gomberg.)

assurance by the Treasury Department of ultimate payment of the tax for the wine at the time of its production. The tax is not actually payable by the cancellation of stamps until it is sold or removed from the bonded premises for consumption or sale. Now, wine can be transferred in bond—that means without the tax yet having been paid, although the obligation to pay the tax has arisen at the time of production—from winery to winery. There are also other types of premises——

Q. The receiving winery must be a bonded winery?

A. Yes. There are also two other types of premises as to which wine can be transferred in bond. Bonded storerooms, as distinguished from bonded wineries and bonded field warehouses—I think reference was made earlier in the trial to bonded field warehouses for the deposit of wine temporarily as a basis for hypothecation of the wine. Wine can also be transferred in bond for export, or can be transferred in bond to a fruit distillery for distillation. I believe that includes all of the ways in which wine may be transferred, from the premises where produced. Tax paid transfers of wine are, as the name implies, removals of wine—strictly speaking, sales, but as a practical matter the Treasury Department does not enforce that—physical removals of wine from bonded premises. The moment the wine is severed physically from the bonded premises, any bonded premises other than a transfer in bond over

(Testimony of Louis R. Gomberg.)

unbonded [462] premises, for example, the wine must be tax paid.

Q. Are bottling establishments ever bonded?

A. Oh, yes.

Q. Now, state very briefly and succinctly, if you will, Mr. Gomberg, the process by which wine is produced, that is, just the process that it goes through.

A. The grapes, having been grown, are harvested, delivered to the winery, normally in what are known as field lug boxes or——

Q. That is too much detail, Mr. Gomberg.

A. All right. Grapes, having been delivered to the winery, are crushed; the crushed grapes, including the juice, the skins and the seeds and pulps are deposited in fermenting tanks where the wine undergoes fermentation for a period normally of about a week to ten days or two weeks; from there the clear wine, meaning the juice, the fermented juice, is drawn off and deposited in a storage tank or other storage receptacle where it undergoes settling and, depending upon the marketing practices of the particular vintner, either remains for aging—after a certain period of time the wine is racked, meaning transferred from one container to another, and the dregs are, or settlings, known technically as lees, are allowed to settle out at the bottom and segregated from the clear wine above it. That goes on two or three times a year, sometimes only once or twice, and eventually when the wine is ready for marketing it undergoes [463] two or three, some-

(Testimony of Louis R. Gomberg.)

times only one, of these operations.

Q. What operations, the racking operation?

A. This is after racking. When the wine is ready to be finally prepared for marketing, it may or may not have been blended in the meantime, the wine is filtered, usually given what is known as a rough filter or filtration; it may or may not be subjected to chilling; it may or may not be subjected to pasteurization.

Q. What is the purpose of the chilling and the pasteurization?

A. The chilling is to facilitate—it facilitates the deposits, the settling out of any solid particles in the wine, so when the wine reaches the consumer it is not likely to be cloudy. Pasteurization is performed for the purpose of reducing or eliminating the presence of bacteria in the wine, which might cause spoilage at a later time. Wine is a living organism in the sense that it consists not only of the moisture and the water present in the grapes, but many chemical constituents and biological constituents that continue to remain in the wine right up to the time it is consumed.

Q. You mean bacteria?

A. Well, that is a name that has an unpleasant connotation. Actually, that is what it is, yes. For that reason wine is treated normally—not a hundred per cent—is treated with what is known as sulphur dioxide. Sulphur dioxide is a [464] bacteria inhibiting agent that keeps these bacteria from going to work in the wrong way and spoiling the

(Testimony of Louis R. Gomberg.)

wine, so the three final steps are the rough filtering and the application of heat and/or cold, and finally what is known as a polishing filtration. That takes out, or should take out, all remaining solid particles. Now, there is another step I haven't mentioned, known as fining. Fining is, in a sense, a form of filtration. It is to remove little amounts of unwanted color, for example, or to remove other substances that may have become present in the wine due to causes apart from the original material itself, such as, for example, contamination by iron. Those substances are removed in a process known as blue fining; then, the wine after those steps is ready for bottling and eventual consumption.

Q. Now, yesterday something was said about—well, strike that, please. In the preparation of wine, how long does the settling out process take—in the racking of wine, over how long a period would the wine be racked?

A. Normally it goes on for a period of about twelve to eighteen months, the settling out process, but the settling out process—to ask how long it takes is really to beg the question. The question of how long the settling out process takes should be asked in this way: How quickly is there a market for the wine? If there is a market for the wine immediately, some people subject it to chilling treatment to hasten the dropping [465] out of the particles that would otherwise drop out slowly in normal settling, and the wine may be marketed in 30 days, 60 days, 90 days. If the market is poor and



(Testimony of Louis R. Gomberg.)

there is no sale for the wine right away, the wine may remain in the winery for years. No matter how long the wine remains in storage, the settling process goes on indefinitely.

Q. After it has remained there for a couple of years, would it be necessary to do any chilling or pasteurization?

A. It still may, depending on the condition of the wine, yes.

Q. Something was said yesterday about the fact that it took approximately four years for red wine to age. Will you tell the court what you know about that?

A. Well, the testimony that I heard that referred to four years I believe had to do with so-called premium priced wines. It is my opinion that the average age of premium priced red wines in California is about three or four years. However, they constitute, as I testified earlier, only a very small percentage of the total production of California wines, perhaps in red wines 3 per cent of the total; maybe  $2\frac{1}{2}$  per cent. Normally—when I say normally, I mean the 95-odd per cent of popular priced wines—the aging period is whatever length of time it takes to find a market for the wine, but most wineries observe a practice of aging the wine at least six to eight weeks even if the pressure is terrific for the wine, like it was in [466] 1943 and 1944—they still hold it off the market. They won't sell it right away. I would say the normal period for aging wine on account of the fact—that is, the rate

(Testimony of Louis R. Gomberg.)

of movement out in relation to production and demand is about 12 to 18 months in California for standard or popular priced wine.

Mr. Marcussen: That is all.

The Witness: May I get a drink of water?

The Court: Yes. I think we will have to give you a recess.

#### Cross Examination

Q. (By Mr. Brookes): Mr. Gomberg, are you a chemist?           A. No, I am not, Mr. Brookes.

Q. Did you study chemistry?

A. I had a couple of courses in high school, yes.

Q. Have you ever made wine?

A. Personally?

Q. Yes.           A. No, I have not.

Q. Have you ever operated a winery?

A. No, I have not.

Q. Well, are you what might be termed a production man in the wine field?

A. No, I am a consultant to all branches of the industry, [467] including production, but the consultation—let me explain—the consultation is in connection with—well, let me illustrate that. Perhaps it is the best way. If a production problem arises involving Alcohol Tax Unit regulations, naturally I must inform myself fully about the production processes involved so I can handle the problem intelligently. Similarly, let us say there is a chemical problem which arises—I am not a chemist, but I have managed to inform myself sufficiently with respect to wine chemistry so I am familiar

(Testimony of Louis R. Gomberg.)

with the chemical reactions and processes that take place, but I do not profess to be a chemist.

Q. Then, if a winery wished to employ a consultant for the purpose of making a better product, a better wine, a finer type of wine, there is another type of consultant they would employ rather than yourself?      A. That is correct.

Q. In your description of the process of making wine, including what I think you referred to as the speeding-up process, I didn't hear any reference to the process which I had heard described as clarification. Are you acquainted with that?

A. Yes. Clarification is a loose term referring specifically to all of those processes which involve removal of the sediment and solid particles in the wine; not, however, including those physical reactions that take place—I shouldn't [468] say physical, I should say chemical reactions that bring about a change in the chemical composition of the wine. For example, clarification is a broad term which includes filtering and fining and chilling and pasteurizing by way of example. It does not, however, include all of the—strictly speaking—all of the fining. For example, in blue fining, a chemical reaction takes place. It is true that that is fining, but strictly speaking clarification means to clarify, to make clear, but in blue fining more often than not the wine is perfectly clear when it is subjected to the blue fining process.

Mr. Marcussen: Are you saying blue fining?

The Witness: Blue fining, yes. The purpose of

(Testimony of Louis R. Gomberg.)

that is anticipatory. It is to prevent the clouding of the wine due to the presence of the metals which experience has demonstrated in the past is likely to occur unless these precautionary measures are taken.

Q. (By Mr. Brookes): In the process which generally can be referred to as clarification, are there any chemicals used?

A. Oh, yes, sure. If by chemicals you mean those substances which are really inert, like diatomaceous earth.

Q. Are there others?

A. Lots of them. Bentonite—do you want a list?

Q. No. I imagine it would be a long list. [469]

A. Yes, it would be a long list.

Q. In regard to the Wine Institute, Mr. Gomberg, what is the primary purpose of the existence of the Wine Institute?

A. I think you will have to make your—what is it, your noun, my grammar is not very good. You may have to make it plural “purposes.” The Wine Institute, I would say, has three primary purposes: one is to inform and educate the public about wine; two is to inform and in a sense educate the industry about things that pertain to wine production; and third is to represent the industry in connection with all types of industry problems, federal and state, international and so on. Now, of course, those are rather broad terms, but generally speaking that is the way I would describe the activities of the institute.

(Testimony of Louis R. Gomberg.)

Q. Is the purpose of informing and educating the public to increase the sale of wine?

A. Precisely.

Q. Do you know what the per capita figures are for the consumption of wine in California?

A. Yes.

Q. Do you know what they are on the national average?      A. Yes.

Q. Will you state to the court what those two per capita figures are?

A. Yes. Year to year, or what would you like?

Q. I think a representative year would be satisfactory.

A. A representative year for California in the last 15 years would have to be somewhere between two to three gallons per capita because fifteen years ago our per capita rate was just about level at three—no material increase in the absolute quantity of wine consumed, that is to say, the gallonage consumer, the per capita has gone down to approximately two gallons, so a representative figure in that fifteen year period would be about two and a half gallons per capita. It ranged from three down to two, approximately. The national per capita has ranged all the way from two-tenths of a gallon up to just shy of a gallon per capita. A representative per capita consumption rate for the United States for that time would be about eight-tenths of a gallon per capita.

Q. Is there any difference in the per capita figure between northern and southern California?



(Testimony of Louis R. Gomborg.)

A. It is my opinion that there is, but to the best of my knowledge—certainly when I was with the Wine Institute—there was no such study made. I should say no intensive study, and I don't know whether there has been a study made since my leaving two years ago. I would be inclined to doubt it. I think I would have known about it. In my opinion, the per capita consumption in Northern California is greater than the per capita consumption in Southern California.

Q. Then it would appear that the need for the education [471] of the public for the consumption of wine is less felt in Northern California than elsewhere in the United States, is that a correct inference from what you said?

A. I think in a very general way that statement would stand as substantially correct.

Q. Mr. Gomborg, is the purpose of—well, preliminarily, you stated the second of the purposes of the Wine Institute was the improvement of production methods in the wineries, and the improvement of the products, is that a correct paraphrase of what you said?

A. No. I said the second step was the information and, to some extent, the education of the industry pertaining to all phases of the industry's operations.

Q. Well, then, the Wine Institute is not concerned with educating the members of the industry as to their production methods and problems?

A. That isn't what I said. What I said was,

(Testimony of Louis R. Gomberg.)

number one was the information and education of the general public; number two was the information and education of the industry.

Q. In what respects?

A. In all respects, pertaining to winery operations, production problems, labeling and improvement of labels and advertising techniques, and so on and so forth indefinitely.

Mr. Marcussen: Excuse me for interrupting, Counsel. When you first mentioned those three primary purposes I do recall [472] that you did say something about informing the industry about production.

The Witness: Well, that is one of them, yes, and I repeated that just now, but I didn't intend to limit it to production matters.

Q. (By Mr. Brookes): But then, one of the purposes, or if not purposes functions of the Wine Institute is to do what it can to improve the quality of production of California wine?

A. I would say that is very definitely one of its purposes.

Q. Is that an end in itself, or an end in assisting the ready marketing of the product?

A. That calls for an opinion that I may not be qualified to answer.

Mr. Marcussen: I don't hear you, Mr. Gomberg.

The Witness: May I have the question again, please.

(Question read.)

The Witness: Well, first let me explain I am not

(Testimony of Louis R. Gomberg.)

now affiliated with the Wine Institute, so I am not in a position to speak officially for them, or even unofficially, but it was my opinion at the time I was with the Institute that the basic job was to increase wine consumption, and that the instruments of doing that job were the three types of activities that I described. I think if there is any answer to your question—[473]—I am not sure I am capable of answering it—it would be ultimately, everything would be aimed toward increasing consumption and rendering the industry more profitable, more prosperous.

Q. (By Mr. Brookes): Does the Wine Institute tend to lay emphasis in giving information regarding production upon the improvements in production methods and design which are of particular interest in the manufacture of large quantities of wine by a single winery?

A. I think I understand the import of your question. The answer is no. But let me repeat, if I may, in the last two years, not having been there, would you limit your question to the period of time?

Q. I will limit my question to the period of time you were affiliated with the Wine Institute.

A. The answer to your question would be no.

Q. What is the method by which the Wine Institute disseminates its production information?

A. I am glad you asked that. That happened to be one of the facets of my work at the Wine Institute. In 1940 the Wine Institute organized what was known, and still is, as the Technical Advisory

(Testimony of Louis R. Gomberg.)

Committee of the Wine Institute, and that committee consisted of about twenty-five winemakers from various wineries up and down the state, large and small. It [474] holds meetings and did then periodically. It has one every quarter now. It may have been more often then, I am not certain. At those meetings industry technological problems are discussed, proposed solutions are discussed; representatives of the University of California, Division of Food Technology, and the University of California, Division of Viticulture, and the United States Department of Agriculture Regional Reserve Laboratory at Albany, California, and other technologists, including independent wine chemists, were present. They were invited then and they are now, to the best of my knowledge invited. The meetings are—were then and are now—open to any interested person, and while the membership on the committee, the technical committee, is limited to twenty-five, I believe the average attendance at most of the meetings ranged upwards of a hundred. Does that answer your question?

Q. Yes, I think it does.

Do you know if Giulio Particelli was ever a member of any of those advisory committees to which you referred?

A. No, to the best of my knowledge he was not.

Q. And you referred during your earlier testimony to the Advisory Committee for the OPA of nine men. Was Giulio Particelli a member of that?

(Testimony of Louis R. Gomberg.)

A. Mr. Particelli was not a member of that committee.

Q. Had you met Mr. Particelli prior to the institution of this proceeding? [475]

A. I am trying my best to recall whether I did or not. I might have talked to him once or twice on the telephone.

Q. Do you recall what the occasion was for those conversations?

A. I have a vague recollection one call pertained to some statistics I was gathering at the Wine Institute in connection with statistical surveys of the Institute which I conducted for the Institute.

Q. Do you remember approximately the year or exactly?

A. It was somewhere in 1941 or 1942, to the best of my recollection.

Q. Mr. Gomberg, you referred to bulletins issued by the Wine Institute as part of the policy of cooperating, I believe, with the OPA, and you said they were prepared by you, as I recall, or at least under your supervision. Were they in Italian or English?

A. English.

Q. How frequently were they issued?

A. Sometimes as often as twice a week; sometimes once every two weeks, but within those periods.

Q. What steps did the Wine Institute take to supply information regarding the contents of the bulletins to its members or vintners who did not read English?



(Testimony of Louis R. Gomberg.)

A. Maybe I'd better break the question up. The first part is what steps were taken? [476]

Q. It is all one question. I am asking if you took any steps, what steps you took for the dissemination of the information in these bulletins for the benefit of the members or other vintners who did not read English?

A. When I first became affiliated with the Wine Institute, in 1936, I soon learned there were quite a number of—my guess is somewhere in the neighborhood of 30 or 40 members of the Wine Institute, who could not speak English. I remember on one occasion we had a letter from one of the members who could not read or speak English, and the letter was apparently written by a relative, and it said, "Please do not send me any more bulletins. It costs me twenty-five cents to get them translated every time." As a result of that, and other similar experiences, we pursued this kind of policy. Lots of the members of the Wine Institute with whom I was in personal contact or over the telephone, could not write or read English, but could speak English, so they would come in to see me or one of my assistants or someone else in the office, or telephone, and we would handle our problem in that way. The answer is we supplemented the bulletins written in English with personal and telephone conferences which enable English speaking and understanding members to understand what was going on.

Q. Did you initiate those telephone conversations?

A. They were invited.

(Testimony of Louis R. Gomborg.)

Q. But if the particular vintner who did not read English [477] did not call in, he did not get the information?

Mr. Marcussen: Objection to that as argumentative.

The Court: Overruled.

A. You see the Wine Institute proceeded on the assumption that everybody operating a bonded winery in California either could himself read English, understand it, understand the English language, or had someone in his employ with whom he was related to do that job, because far more fundamental than the bulletins of the Wine Institute were the United States Treasury Department's laws and the laws of the state which involved many and complicated requirements for winery proprietors, so I assumed—it was the Wine Institute management's assumption, if the person had to have somebody like that to read the English language for the rules and regulations, he would find somebody like that to read the bulletins.

Q. There was reference in your testimony to the placing of the ceilings on the service of finishing wines, and I think you said the ceiling was 2½ cents a gallon. Was that the first ceiling or a lowered ceiling?

A. That was the first prescribed ceiling. Prior to that time the ceiling was whatever the person charged in March of 1942. Of course, nobody normally was charging a ceiling for finishing wine in March of 1942. It wasn't thought of yet, so up to

(Testimony of Louis R. Gomberg.)

that time the ceiling on finishing wine, up to October of 1943, the ceiling on the service of finishing wine was, let us [478] say, obscure. Beginning, however, with the 22nd of October 1943, it was prescribed in the exact amount of 2½ cents a gallon for dry wine and 1½ cents a gallon for sweet wine.

Q. Do you know whether experience indicated that that price for finishing was equal to or in excess of the cost to the finisher of finishing the wine?

A. OPA made a determination in 1943 which caused them to issue that amount for the ceiling. It is well to bear in mind, Mr. Brookes, that was not the entire operation of converting grapes into wine. That was the last step or steps before marketing of the wine. Before that, you see, the ceiling prescribed, the regulations prescribed an amount representing, as I recall it, 6 cents per gallon for converting the grapes into wine and then an additional 2½ cents a gallon for finishing and the total amount there was 8½ cents, which, in my opinion at least, was quite generous.

Q. 8½ cents?

A. Yes. Six cents for the converting of grapes into wine and 2½ cents for the finishing of the wine.

Q. Separating the finishing process and finishing charge, I was directing my attention and yours to this: Was that cost sufficient to cover the labor costs and the other costs that went into the process of finishing alone?

A. I think that question can best be answered in

(Testimony of Louis R. Gomborg.)

this way: If the wartime methods of finishing wines were involved, yes, [479] I would say that would be ample; if some of the prewar methods, especially those that took great precaution and pains with fine quality wines, to finish the wine, then I would say it probably was not adequate.

Q. Did the application of this ceiling of 21½ cents on the service of finishing have the effect of diminishing the amount of that work that was done for others?

A. I don't think the ceiling did. I think the terrific demand for wine did. I don't think the ceiling played any significant part in that, for this reason: I doubt if very many people ever charged that particular ceiling for finishing wine other than those who were producing wine on contract, contract crushing, to be distinguished from contract bottling. Contract crushing deals were charged for on the basis of so much per ton or gallon to convert the grapes into wine, and then the ceiling of 21½ cents for dry wine, 11½ cents for sweet wine to finish the wine—there was not proportionately a great deal of that. The bulk of the wine moving out to consumers in 1943 consisted of wine that was acquired through purchase of the winery and the wine inventory, or the winery's own operation where there was no sale involved at all, or the contract bottling or franchise bottling.

Q. You indicated there were other factors which had the effect of diminishing the amount of this

(Testimony of Louis R. Gomberg.)

finishing for others. What were the other factors you had in mind? [480]

A. The effect of what?

Q. I asked you if the placing of this low ceiling on this service of finishing had the effect of diminishing the amount of the performing of this service or finishing that was done by one winery for another, and I understood you to reply there were other factors which did that rather than the placing of the ceiling.

A. People buying wineries and inventories with the winery, there would be no service charge there. That is one example, if people who previously had been selling to the bulk trade decided "Let's cash in on this good, high market." They did their own bottling out here if they had or could acquire bottling facilities or shipped to a branch, or acquired a common interest with some bottler in the east, so there would be no service charge at all, and then the third method, the contract bottling method, also served to minimize the use given to the finishing ceiling, because if the winery here had facilities of its own it didn't perform a finishing service for anyone, because the wine belonged to the winery. If the finishing was done by the bottler in the east, he was so grateful to get the wine he made no charge anyway for finishing it.

Q. I understood you to say there were a great many wineries in the Sonoma region and perhaps others that were without facilities for finishing themselves.

A. That is correct. [481]



(Testimony of Louis R. Gomberg.)

Q. Assume such a winery attempted to get such wine finished at a neighboring plant that had the facilities for finishing, and then wanted to get it back and sell it under its own labels; I am wondering if the business conditions at the time were such they would have difficulty getting anybody to finish the wine for them, such as a——

A. I don't know of anyone coming to me and complaining they were unable to get a winery to finish it for them. If a winery couldn't do it, they could find a bottler to do it, and there were and are bottlers here in California, just wine bottlers, who have adequate finishing facilities, who would have been, I believe, anxious to get the wine finished or unfinished.

Q. You are referring to the use of the contract bottling method?

A. Yes, by the use of the contract bottling method.

Q. In your description of the process of making wine, I did not hear any reference to seasons of the year, which I understand were of some significance. What are the—do you know what the months of the year are in which the crushing of the grapes and the fermentation of the juice, of the wine, occur in the Northern California wine regions?

A. Yes.

Q. What are those months?

A. In a good season, meaning a season of early maturity, [482] it will start in September. Normally, I would say it is early October, and then it

(Testimony of Louis R. Gomberg.)

continues on, depending on how quickly the grapes are harvested and what the capacity is to accommodate the crush and so on and many other considerations—will carry on into November, the first two weeks, maybe, and occasionally beyond, but the normal period, I would say, is September 15th to November 15th.

Q. Are the grapes ready in the Northern California wine region at all for the making into wine in May or June?      A. No.

Q. Mr. Gomberg, you testified to an oral ruling from OPA, obtained by either long distance telephone or telegram approving the contract bottling system, and you testified that you made an inquiry of OPA in October, I believe you said, of 1943, or you may have said October or November, but I didn't understand whether you were testifying what the date was when you obtained this oral ruling approving contract bottling; what was the date?

A. It was in the latter part of 1943. I do not recall the specific day or month. It probably was in the months of October, November or December; most likely in October, because my recollection is that is when my attention was first called to this method of marketing and my practice was to refer to Washington for ruling, to the OPA for obtaining OPA's opinion as to any new matters of importance that arose in connection with my work.

Q. What was the date of the first—the date when you first learned, I should say, of a written ruling approving contract bottling?

(Testimony of Louis R. Gomberg.)

A. Of a written ruling approving contract bottling?

Q. Yes.

A. I have no personal knowledge of a written ruling affirmatively approving contract bottling.

Q. Did you mean that so far as you know the oral ruling to which you referred is the only OPA ruling on that subject?      A. No.

Q. I mean so far as your own knowledge is concerned?

A. No, it is not the only ruling.

Q. There were other oral rulings?

A. Yes, I assume you are still talking about this period of 1943 and 1944.

Q. Well, in 1944, was there a written ruling in 1944 to your knowledge?

A. Not to my knowledge. I want to make it clear that does not preclude the possibility that somebody somewhere went into an OPA office and got a written ruling from somebody.

Q. I understand that. I am asking about your knowledge.      A. No.

Q. Mr. Gomberg, were the materials for constructing wineries in short supply in 1943?

A. They were. [484]

Q. And in 1944?      A. Yes, they were.

Q. Which of the materials were under allocation by the WPB, do you know?

A. I can stop and think of them. Perhaps I won't remember all of them, but I can remember quite a few. Steel, of course, lumber, chemicals,

(Testimony of Louis R. Gomberg.)

bottles, railroad facilities, a good percentage, almost half of all the wine industry's tank cars were removed from wine service and put into wartime service, raisins of course. I referred to that a while ago, and raisin variety grapes too; caps, redwood stakes for vineyards, automotive equipment, of course, tractors, building materials, in addition to lumber—do you want me to go on?

Q. Well, I suppose pipes and pumps and other things such as that?           A. Yes.

Q. Quite a list?           A. That is correct.

Q. Then, would someone attempting to construct a winery in December of 1943 have been able to construct the winery?

A. Well, it depends on what you mean by a winery. Can you be a little more specific; do you mean the entire operation from beginning to end or the building or the equipment?

Q. I mean the entire operation of making wine; not growing grapes. [485]

A. No. What is your question, could he have done it easily?

Q. Could he have done it at all?

A. Yes, he could have.

Q. How?

A. By using used materials; by taking over, for example, an abandoned building or building used as a tannery, for instance, and locate—they were available but weren't easy—locate cooperage and other facilities needed for wine making and then putting that equipment in the building that al-

(Testimony of Louis R. Gomborg.)

ready existed. It could be done and was done in some instances. It required a great deal of resourcefulness by the proprietor of the winery. He had to be on his toes.

Q. Was there a good deal of competition for such used material as went into a winery?

A. There was a great deal of competition, yes.

Q. When you estimated the value of a winery rose from 10 cents per gallon to 15 cents per gallon during the war, were you referring to the increase in the cost of constructing a winery?

A. I wasn't referring to any specific portion of a winery; I was referring to the overall operations, the buildings, the facilities, the cooperage and the equipment. The rule of thumb of 10 cents a gallon included all of those. It wasn't just for cooperage or just for buildings or just for land; the rule of [486] thumb, just as you undoubtedly use rules of thumb in reference to business transactions or professional transactions, similarly this 10 cents a gallon was considered reasonably accurate in round number figures as the market value of a winery in the dry wine district.

Q. Would a winery that had a spur track alongside the buildings be estimated at a value of 10 cents a gallon prior to the war?

A. It could be, yes.

Q. And a winery without a spur track alongside at the same figure?

A. It could be very easily.

Q. Then do I understand this rule of thumb



(Testimony of Louis R. Gomberg.)

means it was strictly that and did not take into account—

A. It was not a refined rule, that is correct.

Q. And that would be true likewise of the increased figure of 15c a gallon to which you referred?

A. Precisely.

Q. During the period of the war when, as you testified, wine was in short supply and great demand, did not wineries have a value to people who had not theretofore owned them, to secure their source of supply for the next few years while the shortage continued?

A. They did, yes. They had what might be described as a potential value, not a real value, for the reason a winery with [487] wine in it had something real and immediately liquidatable and empty wineries were merely valuable as a potential facility to produce income or wealth. For example, those who bought wineries in late 1944 or especially in 1946, those who bought or built them lived to regret it, because in both of those years the market diminished, to put it too mildly, diminished, and the purchasers lost a great deal of money.

Q. Then, was it true that the question of the value of a winery during this period, the wartime period, depended a great deal upon the judgment of the individual purchaser as to his own needs and as to the future, rather than upon a rule of thumb?

A. Well, Mr. Brookes, I think the emphasis during that period was all on the inventory. The winery was considered a necessary evil, so to speak.

(Testimony of Louis R. Gomberg.)

Mr. Marcussen: A necessary what?

The Witness: A necessary evil. If a man could buy inventory without buying a winery, he would have done anything to be able to do it, but he just couldn't. It is perfectly understandable, that they wouldn't sell the wine without the winery. I am not saying it was wrong. The winery, with high production costs—the wine could not be sold profitably at OPA ceilings, with an OPA ceiling for bulk wine, and there were a limited number of alternatives a man had. If he could realize on his wine, especially if he could realize at a profit, he is [488] going to do it, provided, of course, he wanted to get out of the industry. A lot of people sold their wine by the contract bottling method. That made the bottler happy. He got his wine. He didn't make as much as if he had been able to buy it in bulk, but that was purely a question of who was going to get that profit, the winery or the bottler.

Q. Mr. Gomberg, do you remember the name of the purchaser of Cresta Blanca Winery?

A. I do, indeed.

Q. Who was it?

A. You are referring now to the purchase by the Schenley Interests in 1940 from Mr. Johnson, who was then the owner of Cresta Blanca—yes, I do.

Q. Who owns the Cresta Blanca Winery today?

A. I can only speak from hearsay. My understanding is that it is a corporation, all of the stock of which is owned by Schenley Industries, Incorporated. I may be in error about that, am I?

(Testimony of Louis R. Gomberg.)

Q. No, you are quite right. I would have been very sorry if you hadn't said that, Mr. Gomberg. Did not National Distillers buy——

Mr. Marcussen: May I ask the reporter to make a note in his notes at this point so I can pick it out.

Q. (By Mr. Brookes): Did not National Distilleries buy a noted winery in [489] California?

A. National Distilleries along about the same time Schenley bought Cresta Blanca, they bought Shewan-Jones at Lodi. Shewan-Jones was a different type of operation from Cresta Blanca, you know.

Q. Yes. And do they still own it, that winery, to your knowledge?           A. Does——

Q. Do you know whether National Distillers does or doesn't own that?

A. To the best of my knowledge they still do. They offered it for sale about three months ago.

Q. And do you recall who it was that purchased the Greystone Cellars in St. Helena?

A. Yes, I do.

Q. What was the name of the purchaser?

A. Cresta Blanca Wine Company.

Q. The one to which you referred?

A. The one to which I previously referred, that's right.

Q. Do you know whether it has been sold or not?

A. My understanding is it was sold about, oh, about a month or six weeks ago.

Q. Do you recall when it was purchased?

A. Approximately 1943. I am pretty sure it was 1943. I am not absolutely certain, but I think it was.

(Testimony of Louis R. Gomberg.)

There were so [490] many purchases at that time.

Q. Do you know the use to which Greystone Cellars was put by Cresta Blanca during the period it owned it?

A. I am not certain whether wine was produced there one or more years or not. I do know in the past two or three years it has been used for storage and I am quite sure there has been no production in the last two or three years.

Q. I can only observe, Mr. Gomberg, it took these large corporations quite a long time to get rid of these "necessary evils" and I wonder if you are of the opinion that all the wine purchases and winery purchases are viewed by the purchasers as purchases of "necessary evils," in view of the purchase by Schenley of Cresta Blanca, which it still operates.

A. I didn't get your question.

Q. You stated that the purchase of wineries was, in your opinion, a purchase—something that was regarded by the purchasers as a necessary evil, and—

A. Yes, he was in the business of selling wine, not wineries. If he had to buy a winery to get the wine, I think I can say, perhaps with two or three, perhaps with half a dozen qualifications, they would much have preferred to buy the wine without the wineries than with the wineries.

Q. I assume that expression of opinion is based upon personal conversations with all the purchasers?

A. Not all of them, but most of them, that is correct. [491]

Q. I see.

(Testimony of Louis R. Gomberg.)

A. May I ask, in connection with the question about Cresta Blanca, Mr. Brookes, if I completed the answer to your question?

Q. I believe so, Mr. Gomberg, yes.

Mr. Gomberg, I didn't entirely follow you during the answers to Mr. Marcussen's questions as to whether the contract bottling method resulted in increase in the price of wine to the consumer. Understand, I am not asking a question yet, I am trying to explain my own inability to follow you, before I ask the question. I understood you to say that anyone with an established price for wine under a certain brand in March of 1942 was allowed to use that as his setting price; did I understand you correctly?

A. He was allowed to use the March, 1942, ceiling plus the permitted increase, that's correct.

Q. So long as it was sold under that brand?

A. That is correct.

Q. Then, would it not be true that if a producer of wine sold under his own brand on March—in March, 1942, at a low price and thereafter, by virtue of the contract bottling method was able to shift the wine to another brand with a higher March, 1942, ceiling price, that that would result in an increase in the cost of wine at retail?

A. What may I say, Mr. Brookes? If I understood your [492] question correctly, I think you are confused. Perhaps I ought to restate the whole thing and make it perfectly clear.

Mr. Marcussen: Speak a little more loudly if you can, Mr. Gomberg.



(Testimony of Louis R. Gomberg.)

The Witness: Yes. Under the OPA regulations as they existed in October of 1943, a wine processor, meaning a wine producer or wine bottler or both a producer and a bottler, a wine processor could have one of three types of ceilings for his bottled wine. He could have a March, 1942, ceiling, adjusted upwards under that formula that was established in 1942, or he could have a so-called flat ceiling, of which there were two types, one for current wines and one for non-current wines, or he could have what was known as a special price ceiling, and that had to be obtained upon application to the OPA with a showing that this wine was of very fine quality, he didn't have a March, 1942, ceiling for it, or the flat ceilings were too low, not high enough, and therefore he was entitled to a special price ceiling, which was higher than the flat ceiling. Now, my point about there being no difference to the consumer in the price paid for wine, whether it was sold in bulk by the winery to the bottler for bottling, or whether the winery shipped the wine, retaining title, to the bottler and had the bottler bottle it for him under a contract or franchise bottling arrangement, my point was that in either case the consumer paid the same price for the wine, for this reason: that if the [493] winery had sold bulk wine to the bottler and the bottler had used the flat ceilings, the price to the wholesaler or retailer or consumer would have been precisely the same as if the winery shipped the wine to the bottler for the winery's own account, had the bottler

(Testimony of Louis R. Gomberg.)

bottle it for the account of the winery and then sold the bottler the case goods. As a matter of fact, come to think of it, it is entirely probable that the consumer actually paid less for his wine during this war period on account of this franchise or contract bottling arrangement than he would have paid had the winery been compelled to sell the wine in bulk at these ridiculously low bulk ceilings, because if the winery had been so compelled to sell its bulk wine, I have no doubt that much of that wine would have gone into the hands of bottlers who had very high March, 1942, ceilings, substantially above the flat ceilings, and they would have channeled the wine out through those higher March, 1942, ceilings and the consumer would have paid even more.

Mr. Brookes: Thank you. I think I understand your answer better, Mr. Gomberg. I am through with this witness.

Mr. Marcussen: Just a few questions, if your Honor please.

#### Redirect Examination

Q. (By Mr. Marcussen): Do you know what the average crush of wine from a ton of grapes is, as it is used in the industry?      A. I do. [494]

Q. What is that?

A. Are you referring to OPA regulations or today's conditions?

Q. No, OPA regulations.

A. Under OPA regulations one ton of grapes produced 80 gallons of sweet wine, or 160 gallons of dry wine.

(Testimony of Louis R. Gomberg.)

Q. Now, do you know whether in 1943 and 1944 there was any active market for wineries alone with no inventory of wine?

A. To the best of my knowledge, no.

Q. Do you know of any such sale?

A. I can't recall any.

Mr. Marcussen: That is all, your Honor.

Mr. Brookes: May I ask one further question.

Mr. Marcussen: Certainly.

#### Recross Examination

Q. (By Mr. Brookes): Mr. Gomberg, do you know whether after the crushing season of 1943 there was in California a winery that did not have an inventory of wine in it?

A. My recollection of the statistical survey that I made in 1943—and, mind you, this is all hazy—is that it was no different from any other year when there were always a few wineries without any wine in them. There were always a few and I think I would have remembered if there were no wineries without inventories at the end of 1943. I don't remember that. [495]

Q. What is the cause for there being some wineries not in operation at any time?

A. I am afraid the answer would be pretty complex. For instance, a man is getting old, he has to give up; he doesn't produce; he has sold everything he has, or he may have had financial difficulties and wasn't able to borrow from the bank so he couldn't buy any grapes, so the winery is empty at the end

(Testimony of Louis R. Gomberg.)

of the year. There isn't any single condition I know of that might cause it.

Mr. Brookes: Thank you.

Mr. Marcussen: Thank you, Mr. Gomberg.

(Witness excused.)

\* \* \* \* \* [496]

Whereupon,

GIULIO PARTICELLI

was called as a witness on behalf of the Petitioner, and having been previously duly sworn, testified as follows:

Redirect Examination

Q. (By Mr. Brookes): Mr. Particelli, in the Lucca Winery, did you have any casks or barrels made of oak? A. Yes.

Q. Do you recall how many gallons your oak containers would hold?

A. Oh, between 18, 20 thousand.

Q. Do you recall how many barrels of oak, casks, you had?

A. No, I don't remember the number.

Q. During the year 1943, did you sell any sweet wine? A. Yes.

Q. Did you hold them in bond before selling?

A. Yes, I have some in bond.

Q. Do you remember how many gallons?

A. No, I just remember between 20 and 25——

Q. Gallons? A. ——thousand gallons.

Mr. Marcussen: When?

The Witness: I don't remember if it was later in 1942 or early in 1943.

(Testimony of Giulio Particelli.)

Q. (By Mr. Brookes): You said you did not remember whether it was late in 1942 or early in 1943? A. Yes.

Q. Did you mean you did not remember whether you sold sweet wine in late '42 or early '43?

A. I remember '43 when I sold the winery, no more sweet wine.

Q. Do you remember if you had any sweet wine on hand at the beginning of 1943 for sale?

A. Yes.

Q. You did? A. Yes.

Q. And when you said you estimated between 20,000 and 25,000 gallons, did you mean that was—you thought that was the amount that you sold in 1943?

A. Yes, that is the total amount of gallons I bought in [498] bulk, we moved to another winery from my winery in bond.

Mr. Marcussen: Tax paid in bond?

The Witness: Without any tax paid.

Q. (By Mr. Brookes): In the Lucca Winery, did you have any chilling equipment?

A. No.

Q. Do you know of any sales of empty wineries, by that I mean wineries without wine in them, that occurred in the neighborhood around where you lived?

A. Not in Forestville; a couple in Healdsburg.

Q. Do you know when those sales occurred?

A. Oh, I don't remember; it was in 1941, 1942, or 1943.



(Testimony of Giulio Particelli.)

Q. Would you estimate that it was in one of those three years?

Mr. Marcussen: Objection to that, if your Honor please.

The Court: I will overrule it.

Q. (By Mr. Brookes): Are you certain that those wineries had no wine in them when they were sold?

A. No wine, no tank, in one especially, no.

Mr. Marcussen: And no what?

The Witness: No tank. In one especially the winery sold was completely empty. [499]

Q. (By Mr. Brookes): At any time did you have any other winery finish any of your wine for you?

A. I had Geyserville Growers finish for me once. After they finished me some and I asked if they finish more, they say they have no time, they have no place.

Mr. Brookes: That is all, your Honor.

#### Recross Examination

Q. (By Mr. Marcussen): Do you remember on your direct testimony yesterday, Mr. Particelli, when you were asked about the cooperage in your winery you spoke about redwood only. Why is it that you didn't mention the oak casks then?

A. I don't remember that I said redwood only. I don't understand, because I have between 18 or 20 thousand gallons oak.

(Testimony of Giulio Particelli.)

Mr. Brookes: Counsel, I can clarify that if you will let me examine him.

Mr. Marcussen: Very well, Mr. Brookes would like to clarify that. I will yield to him.

Mr. Brookes: Mr. Particelli, what did you use the oak casks for?

The Witness: I used the most of it for the old wine.

Mr. Brookes: Did you use them for fermentation vats?

The Witness: No. [500]

Mr. Brookes: Did you use them for storage?

The Witness: Yes.

Mr. Brookes: What materials were your fermentation vats constructed from?

The Witness: Redwood.

Q. (By Mr. Marcussen): What was the total capacity of your winery?

A. I'd say it was between 200 and 275, 270, 275—I can't remember.

Q. In storage tanks? I am not including fermentation now; I am including the storage tanks only.

A. Storage tanks, I think about 250—I can't recall. I don't remember exactly.

Q. Would it refresh your recollection to have me tell you that in December, 1943, when you made the sale to Tiara you had 256,000 gallons stored at your winery, and then you had 19,000 gallons stored at Scatino Winery. What was the reason for having that wine stored at Scatino?

A. Because most of my storage tanks were full.

(Testimony of Giulio Particelli.)

Q. Now, when you said that—did you say that you had purchased sweet wine? A. Yes.

Q. And you mentioned a figure, I think, or your counsel did, I guess it was you, of 20 to 25,000 gallons? A. Yes. [501]

Q. What did you do, purchase that all at once?

A. Yes.

Q. And you can't recall what year that was in?

A. 1941—I can't recall if it was 1942 or 1943—yes, in 1943.

Q. You don't know which one of those three years, as I understand your testimony?

A. Two years.

Q. You mentioned 1941 on your direct testimony, if you will recall.

A. I didn't buy the sweet wine in 1941. It was 1942 or 1943.

Q. And did you buy that—what was the purpose of buying that?

A. I didn't buy it, I trade some for dry wine?

Q. Whom did you trade it to?

A. Trade it to Garden Winery in Fresno.

Mr. Brookes: Gallo?

The Witness: Garden Winery.

Q. (By Mr. Marcussen): Is that an Italian name? A. No, it is not Italian name.

Mr. Gomberg: G-a-r-d-e-n. It is just the other side of Fresno.

Mr. Marcussen: May it be stipulated that Mr. Gomberg [502] has informed both of us that it is the Garden Winery?

(Testimony of Giulio Particelli.)

Mr. Gomberg: Garden Vineyard and Winery.

Mr. Marcussen: Yes, at Fresno.

Mr. Brookes: So stipulated.

Q. (By Mr. Marcussen): What did you do with that wine when you purchased it?

A. I sell it.

Q. How soon after you got it?

A. I put it in my winery in bond and every time I drew 50 gallons, a hundred gallons, I put the stamp and take it to my bottling place.

Q. How many gallons of red wine did you give for that, or dry wine?      A. I give two for one.

Q. Two for one?      A. Yes.

Mr. Marcussen: That is all.

The Court: That is all.

(Witness excused.)

\* \* \* \* \*

Whereupon,

LOUIS R. GOMBERG [503]

was called as a witness on behalf of the respondent, and having been previously duly sworn, testified as follows:

Redirect Examination—(Resumed)

Q. (By Mr. Marcussen): Toward the close of your cross examination, Mr. Gomberg, I believe you testified concerning the disposition of some of these wineries that had been purchased by some of the bottling interests. I believe you mentioned National Distillers—and will you refresh my recollection of what others you mentioned?

A. Mr. Brookes asked me about Cresta Blanca

(Testimony of Louis R. Gomborg.)

Wine Company at Livermore and the so-called Greystone Cellars at St. Helena and Shewan-Jones at Lodi.

Q. And would you refresh my recollection also as to what you testified to concerning the sale, the date of resale by those parties?

A. I made no reference to resale of the Cresta Blanca Wine Company at Livermore.

Q. What was your testimony?

A. I said that the Shewan-Jones plant at Lodi was put up for sale a month or two ago and I made no reference, that I recall, to the resale of the Greystone Cellars but it is a fact that the Greystone Cellars were sold—yes, I beg your pardon, I did—a month or six weeks ago.

Q. Now, with respect to those other interests, do you [504] know whether they made any effort to sell those wineries that they had purchased with stocks of wine?      A. I do.

Q. And when did they make an effort, do you know that, to sell those wineries?

A. Well, do you wish me to limit the answer to these particular firms and plants or do you want me to——

Q. At the present time?

A. To the best of my knowledge Cresta Blanca Wine Company has not actually tried to sell Cresta Blanca Winery at Livermore, but Greystone Cellars, I am informed by the assistant sales manager of Roma Wine Company or CVA Corporation, which is affiliated with both Roma Wine Company



(Testimony of Louis R. Gomborg.)

and Cresta Blanca Wine Company, that it has been for sale for several years. The Shewan-Jones plant was abandoned by National Distillers approximately a year ago. It was leased at that time and then about a month or six weeks ago it was offered for sale.

Q. Now, with respect to the wineries in general that were purchased by bottlers during this period of stress in 1942, 1943 and 1944, can you state, do you know, whether any effort was made to resell those wineries? A. I can say, yes.

Q. Will you give that information to the Court, and particularly with respect to the time at which that occurred?

A. I would say that roughly two-thirds of the wineries [505] that were purchased during this period of acute shortage, in 1942, 1943 and 1944, have been offered for sale, sold or resold at various times since 1945, both mostly since 1947. For example, the Roma Wine Company, which is a subsidiary of Schenley Distillers Corporation, now known as Schenley Industries, has sold, offered for sale, or terminated the leasing arrangements for winery properties at Livermore; that is, in addition to the Cresta Blanca property they also leased another plant there. That lease was terminated about two or three years ago—at Healdsburg—at St. Helena, that is the Greystone Cellars that was just sold about a month or six weeks ago. They dismantled and abandoned the former Colonial Grape Products Company at Elk Grove, California, about three years ago. They have never rebuilt the cellars

(Testimony of Louis R. Gomberg.)

known as Manteca Winery, at Manteca, California, after it was partially destroyed by fire three or four years ago. That makes five out of about nine or ten properties that they have either sold, offered for sale, or failed to rebuild after partial destruction by fire over the last three or four years. That is in the case of Roma. In the case of National Distillers they purchased altogether four winery properties in California; the so-called Paloma Winery near Fresno, the Asti plant, that is the primary premises of Italian-Swiss Colony. The Shewan-Jones plant at Lodi and the former Solano Winery at Cordelia, California. They sold the Cordelia plant about eight or ten months ago. They had it on [506] the market for three years or thereabouts, and as I testified a little earlier they leased Shewan-Jones' plant last year and now have offered it for sale within the past sixty days. They still retained the Fresno and Asti premises.

Q. Now, do you know generally with respect to the other wineries that were purchased during this period whether many of them were offered for sale or how many of them were offered for sale; do you have any information about the others?

A. As to the disposition of the wineries that were purchased during the winery period, yes. The Elk Grove Winery at Elk Grove, which was acquired by Tiara Products Company and was disposed of about a year or a year and a half ago, according to my best recollection; the Bradford Winery at Bradford, California, which was dis-

(Testimony of Louis R. Gomborg.)

posed of about two years—no, three years ago.

Q. Do you know when that was purchased?

A. That was purchased in 1945 or 1946.

Q. I am referring to wineries that were purchased in 1942, 1943 and 1944. You mentioned some. I think you estimated sixty or so.

A. Fifty or sixty had been purchased at that time, yes. In some instances there have been two, three or four changes in ownership since that time, since the original purchase. For instance, the Solano Winery was bought originally by a group of eastern bottlers in early 1943. It was resold to another [507] bottler in 1944, and then another bottler in 1945, and then Italian-Swiss acquired it in 1945 or 1946, and then put it on the market about two and a half or three years ago, shortly after they bought it. They had it one year. I think the best answer I can give to that is that, yes, there have been many resales, sales by bottlers who acquired wineries during the scarcity period. Some are still retained by those bottlers. I would say that in the main those that are still retained are being retained by bottlers for the reason that when they bought they did not buy necessarily as a war measure. They bought as a long-range investment in the industry. There were some of those sales, but they were in the minority.

Mr. Marcussen: That's all.

#### Recross Examination

Q. (By Mr. Brookes): Do you recall, Mr. Gom-

(Testimony of Louis R. Gomberg.)

berg, when National Distillers bought the Italian-Swiss Colony plant at Asti?

A. I believe I do recall that, yes.

Q. What year was that?

A. I believe it was early 1943.

Q. You testified, according to my notes, that by the close of 1944 over half of the industry volume had been sold—wine industry volume, measured in terms of wineries?

A. No, measured in terms of gallonages.

Q. Gallonages in the wineries had been sold to either [508] bottlers or distilleries. Perhaps there is no distinction between the two in the wine business. Did I understand your testimony correctly?

A. Not exactly. I said that in my opinion over half of the volume of the industry was represented by sales of winery properties in the period 1942, 1943 and 1944 and a little bit in 1945, yes, that is substantially correct, in my opinion.

Q. Does that have any relation to the statistics that were read from time to time that some percentage figure which is over half—and I don't remember—of the California wine industry is controlled by eastern distillers?

A. That has some relation to the statistics but that happens to be an inaccurate statement of the facts, Mr. Brookes?

Q. What is the fact?

A. The fact is this, and this is my recollection of three studies of the extent of distiller participation in the wine industry that I made for the Insti-

(Testimony of Louis R. Gomberg.)

tute at the request of the Federal Trade Commission and the Department of Justice in 1945, 1946 and 1947, I believe were the years. The aggregate holdings of the distilling interests in the wine industry in California as of those times, which represented the peak of their holdings, was in the neighborhood of one-third of the wine industry's facilities in California. That was at the peak of their holdings. Today I would say that that percentage is down to perhaps 25 to 28 per cent. [509]

Q. In terms of gallons of productions?

A. In terms of storage capacity.

Mr. Brookes: Thank you.

Mr. Marcussen: That is all, Mr. Gomberg. Thank you very much.

(Witness excused.)

Mr. Marcussen: Mr. Gould, please.

Whereupon,

### GLENARD GOULD

was called as a witness on behalf of the Respondent, and being first duly sworn, testified as follows:

#### Direct Examination

The Clerk: State your name and address, please.

The Witness: Glenard Gould, 709 Financial Center Building, Oakland.

Mr. Brookes: Is that your residence?

The Witness: No, my residence is 266 Lenox Avenue, Oakland, California.

Mr. Marcussen: At this stage of the trial, I



(Testimony of Glenard Gould.)

think a little banter is permissible.

The Witness: Yes, I think so.

Q. (By Mr. Marcussen): What is your occupation, Mr. Gould?

A. Internal Revenue Agent.

Q. Briefly, what are your duties as an Internal Revenue [510] Agent?

A. To examine all types of returns, to verify they are correctly stated from the taxpayers' records and other information necessary.

Q. Did you make an investigation into Mr. Particelli's income tax liability for the year 1943?

A. I did.

Q. In the course of that investigation, did you have occasion to talk to Mr. Particelli?

A. I did.

Q. Can you recall approximately when that was? A. Approximately April 17th, 1945.

Q. Did you see him on any other occasion?

A. I did not.

Q. Did you have a conversation—did Mr. Particelli tell you anything about the possibility of repurchasing his winery?

A. During the course of conversation, yes.

Q. What did he say?

A. Particelli informed me that if he cared to go back into the business he could purchase the winery for less than \$50,000.

Q. What year was that?

A. That was in 1945, when I talked to him.

Q. Did he identify the year in which he could

(Testimony of Glenard Gould.)

have made that purchase? A. He did not.

Q. I hand you Respondent's Exhibit V for identification and ask you to state what that is.

A. It is a copy of a letter that was made out to Mr. Francis M. Passalacqua, Attorney at Law, Healdsburg, California, from the Office of Price Administration, dated April 6, 1944.

Q. And can you tell me where this came from?

A. Yes, it came out of—I had it copied from an original that was in the files of Mr. Arthur A. Hartman, Certified Public Accountant, Santa Rosa, California.

Mr. Marcussen: If your Honor please, counsel has stipulated this may be introduced in evidence. It is a letter dated April 6th, 1944, to Mr. Passalacqua from the Office of Price Administration, and it is a ruling concerning the sale of wine in connection with the sale of a winery. Now, I will put that in evidence as Respondent's Exhibit V.

The Court: Admitted as Exhibit V.

(Whereupon, the document was marked for identification as Respondent's Exhibit V and was received.)

Q. (By Mr. Marcussen): Where did you talk to Mr. Particelli, do you recall?

A. Yes, his new home that he was building in the Rincon Valley near Santa Rosa.

Q. Did you go to his—did you ask him for his records? [512]

A. I did.

(Testimony of Glenard Gould.)

Q. And what did he tell you?

A. He informed me that his records had been destroyed by fire.

Q. Did you make any effort to obtain any other records he might have had?

A. Just what do you mean?

Q. Well, did you go to his store or did you go to any other place to find his books?

A. He referred me to Arthur Anderson Company, that they may have something that would—that I could work from in the nature of records.

Q. And did you go there?           A. I did.

Q. Whom did you talk to?

A. I think on the first occasion, Mr. Mencoﬀ.

Q. And did you see any books on that occasion?

A. I did.

Q. Did you talk with anyone else there?

A. Yes, I later talked to Mr. Oefinger with regard to the case.

Q. Did Mr. Mencoﬀ or Mr. Oefinger provide you with a so-called day book that Mr. Oefinger testified to the other day?           A. They did.

Q. Did you examine that book? [513]

A. I did.

Q. What else did you do?

A. I took a transcript by page of the various items in it.

Q. Do you have it with you now?

A. I do.

Q. I have had the two pages you handed me stamped for identification as Respondent's Exhibit

(Testimony of Glenard Gould.)

W and I ask you whether this is a complete transcript of all of the figures in the book or whether it purports to be a transcript, a summery of the totals in each of the accounts?

A. Those are only totals in each of the accounts.

Q. Is there anything on these pieces of paper, the two sheets, which did not appear in the book?

A. There is not.

Q. I notice on the second page, in the lower righthand corner, there are a few items. Is that just a continuance?

A. The one item in here happens to be grape boxes which refers back to a former page, and for my own information, to determine—I wanted to know the date when they were purchased, to ask someone, and I made that notation there.

Q. Did this, therefore—you say this is a correct transcript, then, of the accounts in that book?

A. That pertained to the income tax returns. If there were any others, I did not take a transcript.

Q. What do you mean any others?

A. I do not recall if there might have been any figures in the back of the book that did not pertain to the income tax returns. My recollection is this is all there was in the book.

Q. Yes. Your purpose was, your purpose in getting these figures—

A. My purpose was to have a record that would tie in with the figures as submitted on the return.

Q. Well, was it your purpose to take down all the income and special items pertaining to the year

(Testimony of Glenard Gould.)

1943?           A. That is correct.

Q. And did you do that?           A. I did.

Mr. Marcussen: If your Honor please, I would like to have this in evidence as Respondent's Exhibit W.

Mr. Brookes: Your Honor, I wish to object to the offer. There was an audit going into several issues of tax liability, of which three out of four could be settled by stipulation. I have stated them before, so I won't repeat it again. There is only one issue remaining in the case, and that document obviously is of no relevance to that issue whatsoever. The contents of the document, what figures appear there, have nothing whatsoever to do with whether the government can allocate some of the sale price of the winery to the sale of the wine.

Mr. Marcussen: Respondent is not introducing this [515] exhibit at all with respect to any issues which have been stipulated in this case. This is for the purpose of providing the information contained in books which the petitioner has testified were destroyed and which have been identified as the books of account which pertained to the year 1943. That is the taxable year here in question and I also explained to your Honor in connection with the other evidence that was introduced on behalf of respondent that it is necessary for respondent to have this information in order to make a computation, to present to your Honor on brief, to show that there were other sales during the year, must have been



(Testimony of Glenard Gould.)

other sales during the year at higher than ceiling prices.

Mr. Brookes: Your Honor, the question of whether there were sales during the year at other than ceiling prices, by which I assume counsel means above ceiling prices, is obviously something that counsel is not entitled to prove in this case. He is not entitled to prove any taxpayer has been guilty of a crime not involving the Internal Revenue Code, and in the determination of a tax case—there is no evidence he has been indicted, tried, acquitted or convicted of a violation of any maximum price regulation, and the fact is he has been none of those things and counsel is now trying to find him guilty of a crime.

Mr. Marcussen: No, I will state for the record that it is not respondent's purpose to find him guilty of a crime. [516] The purpose is to impeach Mr. Particelli, who testified that he didn't want to ever sell over ceiling prices and that he never did sell and this information will demonstrate clearly that he did, and that is the only purpose of the offer. The OPA penal provisions are all dead as far as I know, and I don't think the petitioner could be prosecuted and there is no purpose to lay a foundation for prosecution, if it were possible.

Mr. Brookes: But you are attempting to prove him guilty of a crime, and I might add that the suggestion that this letter will prove whether or not he did sell over ceiling prices is ridiculous.

(Testimony of Glenard Gould.)

Mr. Marcussen: Then it ought to be put in the record.

Mr. Brookes: He testified there was a wide range of prices, I think he said it went up to \$1.40 a gallon and his lower priced wine, he said, and his daughter testified likewise, ranged between 32 and 42 cents a gallon when sold in bulk lots, tax included, and that was during the period of 1943, and as Mr. Gomberg has so eloquently testified the price controls varied from case to case and practically from bottle to bottle. They depended, in the first place, upon March, 1942, ceiling prices of wine and this taxpayer was selling wine in March, 1942, the wine of the Italian-Swiss Colony and others whom he represented, and so I think that this document cannot possibly prove what counsel says, and if it did prove what he is trying to prove it would, I repeat, be an effort to prove him guilty of a [517] crime and thereby impeach his testimony.

Mr. Marcussen: If your Honor please, there has been no testimony here that petitioner had any ceilings for bulk wines in the spring of 1942. In order to have done that, he would have had to have produced in 1941, and there has been no evidence he produced in this winery in 1941. Besides, it seems to me that as a matter of argument these figures are available to respondent as well as they would be—I beg your pardon, to petitioner as well as they would be to respondent, and if there are any inaccuracies, they may be equally demonstrated by petitioner upon brief.

(Testimony of Glenard Gould.)

Mr. Brookes: Your Honor, it must be apparent I was under no obligation to prove the ceiling prices of this petitioner with respect to every type of wine he sold. I did not do so. The record does not contain that information. Unless it contained that information this could not tend to prove what counsel is attempting to establish in any event.

The Court: Well, I think the general rule as to evidence in impeachment, where it might involve criminal conduct on the part of the witness is whether he has been convicted of a crime; not whether he has been indicted for a crime, whether he has been convicted of a crime. That would be evidence in the way of general impeachment. Now, I don't know, it seems to appear here from the statement of petitioner's counsel that this might be more or less confirmatory of petitioner's testimony [518] here as to certain sales he made of wine and different prices—I don't know. I doubt very much the probative effect of it for impeachment purposes. In other words, even if it were admitted, I don't know if it would have very much weight for impeachment purposes, but it is not competent to impeach, generally, by showing certain acts of the witness for which he has not been convicted of a crime.

Mr. Marcussen: That is not my purpose, if your Honor please. The petitioner testified that in connection with this same transaction in 1943, in December, to Tiara Products Company, that he inquired as to what his ceiling prices were and that it

(Testimony of Glenard Gould.)

was his intention to stay at the ceiling prices. He also testified that he had never sold over ceiling prices, and petitioner must have found it to his advantage to offer that testimony to this court to sustain the valuation that he placed upon his wine in December of 1943. Now, this record, which is a record of income and expense and deductions for the very taxable year in question will, I assure your Honor, provide the information whereby we will be able to demonstrate beyond peradventure of a doubt that he sold his 1942 crush, which was some 100,000 gallons, at \$70—I beg your pardon, at 70 cents a gallon. We can compute that, and it seems to me that is information which ought to go into this record and that petitioners themselves have presented testimony here which we desire to rebut with this exhibit. [519]

Mr. Brookes: Your Honor, I do not recall having asked any witness whether he made a sale over ceiling prices. I don't think I would have made such a mistake. I know what the issue in this case is, and I also know that I would be very silly to try to trap my own clients in a controversy involving a criminal possibility.

Mr. Marcussen: I will suggest the possibility that it came out on cross examination, and I don't care whether it was by cross examination or by the petitioner on direct examination, but it seems to me it is very material to rebut his testimony and that is the reason it is offered, if your Honor please.

Mr. Brookes: Your Honor, you recall you al-

(Testimony of Glenard Gould.)

lowed respondent's counsel a very wide range in questioning, frequently over my objections. There are undoubtedly matters appearing on cross examination which would open up—might even open up the entire past life of this taxpayer, and it could open up—similar latitude could open up the past life of every taxpayer who comes into the Tax Court, and then, once it is brought up on cross examination, becomes a general inquiry as to whether they may or may not have offended the criminal laws of the country.

Mr. Marcussen: I have no such purpose whatsoever. I shall not press criminal prosecution at all or criminal violations on brief. That is not, I state, the government's concern. This [520] merely is a basis from which—it is needed to impeach the witness' testimony that he sold only at ceiling prices and not above that price, and I submit we are not attempting to open up his entire past life but merely the year 1943. I want to put into evidence the records of his business transactions which are material to this very case we are determining, his tax liability for this very year, if your Honor please, and I submit that ought to go into evidence.

Mr. Brookes: May I illustrate my point with a hypothetical case. Counsel might very well ask a question of a witness whether he had ever committed arson, and then an answer would naturally come out no, and then in this manner he would attempt to prove he had committed arson.



(Testimony of Glenard Gould.)

Mr. Marcussen: Not by books, you can't prove it by books.

Mr. Brookes: By any manner, Counsel.

The Court: What does this represent? You said it represented the totals?

The Witness: The records of the taxpayer from which the income tax return was prepared; the income tax, the totals used upon the income tax return, are reflected, your Honor, in each of these totals that are here, and nothing else.

Mr. Marcussen: Every one of those figures will tie into the income tax return for the taxable year involved in this proceeding. [521]

The Court: Well, what do those totals show, what do they represent?

The Witness: For instance, here on page 2 it shows wine purchased from Roma, \$6300; wine purchased from Sonoma, \$21,000-odd dollars; page 4, Italian-Swiss Colony, \$10,700; page 5, Beer Consumers Bottling Company; page 6—

The Court: Those are purchases?

The Witness: Those are purchases which make up the outside purchases that the taxpayer claimed per his return by adding the item on page 23, stamps, \$10,238; making the total that the taxpayer claimed in his cost of goods sold by adding thereto the inventory figure at the beginning of the year and taking from that the inventory figures at the close of the year. The other figures on there represent the expenses that are claimed per return.

Mr. Marcussen: As deductions.

(Testimony of Glenard Gould.)

The Witness: As deductions from the gross income.

The Court: What evidence is there as to whether he sold at or above or below ceiling price?

Q. (Mr. Marcussen): Did you make a schedule of that?           A. I did.

Q. Do you have that with you?

A. I do. I used a schedule by taking the total sales and from that taking, your Honor, the amount that was allocated for [522] the sale of the wine, or the \$77,000, and came down to the total that would have been their other sales. I then took the cost of goods sold and eliminated the grape purchases from that, which had been agreed upon, and what they claimed as labor, which included a \$10,000 bonus, to arrive at the cost of the merchandise that was sold other than the winery and wine sales.

Q. In December of 1943?

A. In December of 1943. I then allocated to—took the purchases, the outside purchases that he claimed for Roma, Italian-Swiss Colony and so forth, and to that I allocated a mark-up of better than 50 per cent and added thereto the cost of the bottles and supplies that were used and arrived at a sales price of the wine that would have had to have been sold in bond. His books show that he has——

Q. What was that price you arrived at?

A. In this computation I arrived at a sales price of \$107,243.

Q. You mean per gallon——

(Testimony of Glenard Gould.)

A. Wait a minute.

Q. Excuse me.

A. He showed that he had purchased \$10,238 worth of stamps. He had testified that the majority or all of his sales had been dry wine. Dry wine took a stamp of 10 cents per gallon. By multiplying the 10 cents per gallon to the \$10,238, I [523] arrived at a total sale of 102,380 gallons that must have gone through the winery from those sales. Dividing the 102,380 there, I came to a figure of 94c a gallon. I recomputed that after the testimony of the accountant yesterday that part of those sales or the part that had been reported as sales constituted accounts receivable from a prior year. I, therefore, took only—and recomputed this on the same basis, the amount that showed in their books as total receipts to the end of September, in the amount of \$136,750. I reallocated this, taking out on the same basis the cost and adding the profit that would normally be attributed to that, taking from those sales the \$10,000 worth of stamps and I arrived at a figure of 69½ cents per gallon, approximately.

The Court: What year?

The Witness: 1943.

The Court: I will overrule the objection. It may be admitted.

(Whereupon the document was marked for identification as Respondent's Exhibit W and was received.)

(Testimony of Glenard Gould.)

Mr. Brookes: May I have an exception, your Honor?

The Court: You may have an exception.

Mr. Marcussen: That is all.

Mr. Brookes: I have no questions.

The Court: That is all.

(Witness excused.)

\* \* \* \* \*

[Endorsed]: T.C.U.S. Filed June 19, 1950.

Tax Court of the United States

Docket Nos. 25439, 25440

June 1, 1950, 11 o'Clock a.m.

Bank of Sonoma County, Sebastopol, California

H. L. HOTLE

called as a witness in behalf of the Petitioner, being first duly sworn by the Notary Public George Carlisle, Sebastopol, California to tell the truth, the whole truth and nothing but the truth, testified as follows:

Examination

Q. (By Mr. Brookes): Will you state your name?

A. H. L. Hotle, H-o-t-l-e.

Q. What is your occupation?

A. President, Bank Sonoma County.

Q. Where do you reside?

A. 750 High Street, Sebastopol.

(Deposition of H. L. Hotle.)

Q. How long have you been associated with the Bank of Sonoma County.

A. '29—21 years.

Q. Mr. Hotle, I hand you the Exhibit B-2 which has been placed in the record of this case by stipulation, and I call your attention to the fact it is addressed to the Bank of Sonoma County. At the foot of the letter is the acknowledgment of it, receipt for the bank, signed "H. L. Hotle, President."

A. Correct.

Q. I want to ask you whether you recall having seen the original to that document?

A. I have.

Q. Was your signature the one which was appended to it?

A. That is correct. [2]

Q. Then I ask you to examine the stipulated Exhibits C-3 and D-4, also addressed to the Bank Sonoma County, and state whether your signature is the one which appears on the original of those documents?

A. (Documents examined by witness) That is correct.

Q. And D-4 as well.

A. That is right.

Q. Did the bank then act as the escrow agent to the sale by Mr. Particelli to the Tiara Products Company of the Lucca Winery and the inventory of wine?

A. That is right.

Q. And you acted for the bank as the signer?

A. Yes.

Q. Did you receive any instructions in the matter?

A. I did.



(Deposition of H. L. Hotle.)

Q. Do you recall what those instructions were?

Mr. Marcussen: May it be established whether they were in writing or oral?

Mr. Brookes: Withdraw the previous question.

Q. Were those instructions oral or in writing?

A. In writing.

Q. Were they other than these documents which have been identified and which you have examined?

A. No. The documents, in other words, that were turned over to the Internal Revenue Department were the documents which we handled the escrow on solely.

Q. Do I understand, then, that you are testifying that your only instructions were those found in Exhibits B-2, C-3 and D-4, which you have examined?

A. As far as I know, yes. Of course I haven't got the [3] original instructions with me. Those were turned over to you.

Q. These are true copies, Mr. Hotle, of the originals which were turned over by you?

Mr. Marcussen: I will hand you a file which was produced by the bank under subpoena.

(File handed to witness by Mr. Marcussen.

Witness examines the file.)

The Witness: That is right. These were—In other words, these instructions which are included here were the instructions under which I operated in connection with the completion of the escrow and the amendments that were issued afterwards.

(Deposition of H. L. Hotle.)

Mr. Marcussen: Now, you are just referring—

Q. (By Mr. Brookes): Mr. Hotle, you are referring to the contents of a file which is part of the records of the bank and in the evidence in this case; we have stipulated that these exhibits B-2, C-3 and D-4 are true copies of documents of which the originals are found in your bank file. I would like you to compare them briefly, the copies briefly, with the originals so that you will be satisfied in answer to the question that these are the instructions to which you were testifying.

Mr. Brookes: My question, Mr. Marcussen, is for the purpose of identification only.

Mr. Marcussen: Yes.

(Witness examines documents.)

The Witness: You are starting with A-1, is that correct?

Q. (By Mr. Brookes): A-1 is not one of the instructions to the bank, however, if you have seen an original to A-1, then my question would comprehend that as well. I was referring to [4] B-2, C-3 and D-4, since they are the ones addressed to the bank.

A. All right. December 21st, that is right. B-2 is correct.

Q. Mr. Hotle, I should inform you it is stipulated Exhibit C-3 was later withdrawn and Exhibit D-4 substituted. It is therefore possible C-3 is no longer in your file.

A. What I am going on is, in other words, the ultimate instructions which I completed the deal

(Deposition of H. L. Hotle.)

on. In other words, that would be under D-4 as far as Tiara Products are concerned. Particelli's letter—if I can locate that—December 28th. Where is Particelli's letter of December 28th?

Q. Maybe it follows next in line. A. No.

Q. That is dated under 21st.

A. Wait a minute. That is December 21st. In other words, on the basis of my—We have a letter here of December 28th enclosing a deed from Particelli to Lucca Wine Products delivered upon the basis of \$268,000, dated December 28th. That is the letter I don't seem to find here. Maybe I have missed it. Sixth of December, December 21st, December 21st, December 28th. This is the letter from Tiara Products. That is right. December 21st and—and December 21st. In other words, this letter of December 28th does not show in this.

Mr. Marcussen: Isn't it Exhibit D-4? I think we stipulated that the date on that should be December 28th.

Mr. Brookes: Yes.

The Witness: Well, D-4 is right. In other words, D-4 is the letter of instructions I received from the Tiara Products [5] Company. (Reading) "We are enclosing——"

Mr. Marcussen: By the way, while Mr. Hotle is looking that up, Mr. Brookes, I want to say it is my recollection we stipulated in open court that the date on the D-4 was December 28th.

Mr. Brookes: We did so stipulate.

(Deposition of H. L. Hotle.)

Mr. Marcussen: And if we did not, may it now be stipulated?

Mr. Brookes: I will stipulate it again. We have already done so.

The Witness: I am going back on the basis——

Mr. Brookes: Mr. Hotle is referring to the other letter.

The Witness: All of Particelli's instructions, December 28th—(Reading) "We are enclosing grant deed Particelli to Lucca Winery to Tiara to deliver bill of sale now located in the winery for \$268,000." We were authorized to place revenue stamps for \$110, which is the letter I don't find here. Wait a minute, wait a minute, maybe I have got it here.

Mr. Brookes: This is December 21st.

The Witness: Well, that is it. That is why it didn't tie in. It isn't the same letter, and I don't find this letter in this group of documents which is specifically the basis upon which I closed the transaction, if you follow me.

Mr. Brookes: Yes. Apparently the letter of December 21st——

The Witness: In other words, this letter of Mull's which is this letter, is there under D-4, I think it is.

Mr. Brookes: Yes.

The Witness: D-4. That is dated December 28th. "Enclosing [6] \$268,000, and so on." "We have checked the bill of sale," and so on down the line. "The instructions supercede and replace——",

(Deposition of H. L. Hotle.)

signed "Bank Sonoma County." That is correct, but you go back, in other words, to this letter that— This is strictly from Tiara Products on their end of the deal.

Mr. Brookes: Yes.

The Witness: This letter is the sale of the Lucca Winery by Particelli and the instructions, and this is the sale of the wine. Now, I don't know whether we have this one, but I can't find this letter in this group of letters.

Mr. Brookes: It is not there?

The Witness: Now, if you find the other one, maybe—"We are enclosing—December 21st—bill of sale—" That, of course, is not this letter.

Mr. Brookes: But it is this one.

The Witness: Here we are now. This will be——

Mr. Marcussen: In other words, you are referring to Exhibit F-6, a copy of a letter which you now find in the bank file?

The Witness: Yes.

Mr. Marcussen: That is Exhibit F-6.

The Witness: Which is not here.

Mr. Marcussen: F-6 is a true copy of this?

The Witness: Is this F-6? That is correct.

Mr. Marcussen: In the bank file you are referring to another, December 28, 1943, to the bank by Mr. Particelli? It is that letter which you find in your file which you say is not included as one of the letters in the stipulation?

The Witness: I can't find it. [7]



(Deposition of H. L. Hotle.)

Mr. Brookes: Shall we request the witness to read it into the record?

Mr. Marcussen: Let's just look at it.

(Counsel and witness examine the letter.)

The Witness: Practically the same thing, but it isn't the same letter. I can't stipulate to one thing and not find it in the document.

Mr. Brookes: No.

The Witness: You see, the trouble is, naturally the confusion there—Could—Gentlemen, could we go off the record for a moment?

Mr. Brookes: Yes, we will go off the record.

(Off the record.)

Q. (By Mr. Brookes): Mr. Hotle, is it your interpretation of the letter addressed to you, dated December 28th, by Mr. Particelli, to which you referred earlier in your testimony, that it is in substance the same as the stipulated Exhibit E-5, dated December 21, 1943? A. In substance, yes.

Q. Is it your belief that the only change of significance in the later document from the earlier document is in the addition of the instruction to close the deal no later than March 1, 1944?

A. If I ever handle one of these again I will get rid of all the copies. They are very confusing. Now, I am trying to find the document dated December 21st.

Q. That is the one dated December 21st. I don't think you have it in your file.

A. That is right, as compared with the one of December 28th. You are asking if they are rela-

(Deposition of H. L. Hotle.)

tively the same, aside from this [8] license. They are.

Mr. Marcussen: Should we not refer to the actual exhibit?

Mr. Brookes: E-5.

The Witness: E-5. That is in substance, yes, as exhibit dated December 28th, with the exception of the blenders permit.

Mr. Marcussen: You are talking— Exhibit dated the 28th. You are referring not to an exhibit but to another letter in the bank's file, so far not in evidence in this case?

The Witness: That is right.

Mr. Marcussen: And then, do you recall— I don't think there was an answer to your question, Mr. Brookes.

Mr. Brookes: I don't believe there was.

Mr. Marcussen: And I think it might further be brought out by making the suggestion there was this further qualification in the letter, that the bank loan be paid out of the proceeds to Mr. Particelli.

Mr. Brookes: Let's have Mr. Hotle read the letter into the record.

The Witness: Which letter?

Q. (By Mr. Brookes): Would you do that? The letter from Mr. Particelli.

A. (Reading.) "Bank Sonoma County, Sebastopol. Gentlemen: We are enclosing herewith a grant deed, G. Particelli and Eletta Particelli, conveying the Lucca Winery and Lucca Products Company, Inc., together with a bill of sale to all the equipment

(Deposition of H. L. Hotle.)

now located in said winery. You are to deliver these instruments to the above purchaser upon the payment for our account of the sum of \$268,000 from which you are to pay [9] all indebtedness due the Bank Sonoma County and Sebastopol National Securities Company, and when I have advised you of the issuance to the purchaser of Wine Producers and Blenders Basic Permit at the Lucca Winery premises, and in any event not later than March 1, 1944. These instructions supercede and replace all of our former escrow instructions relating to the Particelli sale. You are authorized to place on the above deed revenue stamps in the sum of \$110. (Signed) G. Particelli."

Q. Do you recall, Mr. Hotle, whether you proceeded in accordance with the instructions in the letter which you just read?           A. I did.

Q. Do you recall when Mr. Particelli was paid by Tiara Products Company?

A. You mean when he actually received the cash?

Q. When the payment was made to the bank for his account by Tiara Products?

A. Well, I can't recall exactly when the payment was made by Tiara Products to the bank because we had some difficulty in connection with that payment. We naturally accepted their checks. Those checks were drawn on various New York banks. We immediately sent those checks to be cleared, and we ran into trouble. We had anticipated completing the transaction, and the banks wired us and

(Deposition of H. L. Hotle.)

in some cases that the checks were not paid. We handled the transaction through Chase National Bank in New York, and there were two or three different checks of odd amounts. I think one of them was paid, and I think two of them were not paid. Evidently Tiara Products Company hadn't realized we'd get those checks back as fast as we did, and there [10] wasn't sufficient money in the account, evidently, to cover them. They wired us non-payment, of course. Then we had to go to work on Tiara Products through Mull, advising them the checks had not been paid and we wanted action. So the deal was held up because of that for a few days, and finally I received a wire from Chase that the checks had been covered. Of course, immediately upon the receipt of that information I was ready to close.

Q. Was that before the end of the year?

A. Yes, on the 31st of December.

Mr. Marcussen: Was the bank held open to get word?

The Witness: No.

Mr. Marcussen: Do you recall?

The Witness: No. In other words, I received word early in the afternoon of the 31st, and I took the papers over myself to the title company in order that it would be expedited. We weren't sure whether we were going to make it or not.

Q. (By Mr. Brookes): Was the credit to Particelli's account made on that day, December 31st?

A. I believe it was. I think the record will indi-

(Deposition of H. L. Hotle.)

cate that. (Witness examines document.) We completed the deal that afternoon and paid off the notes.

Mr. Marcussen: Off the record.

(Off the record.)

Mr. Brookes: On the record, Miss Clary.

Q. Did you, Mr. Hotle—did you receive any oral instructions from the parties?

A. Not that I can recall. There was a considerable amount of discussion at the time these instructions were drawn up as [11] to how they were to be drawn. I don't recall just what took place, but my instructions were purely written, in other words, and those were the instructions I followed and no others.

Q. Did you understand your instructions to be that if Tiara Products before the end of 1943 had only paid \$77,000 that you would have been required under your instructions to transfer the wine to Tiara Products?

A. If I had the money——

Mr. Marcussen: Before you answer, Mr. Hotle, I wish to interpose an objection on the ground it is leading.

Mr. Brookes: I will withdraw the question. I think it is leading.

Q. Mr. Hotle——

Mr. Brookes: I will rephrase the question.

Mr. Marcussen: I don't mean to infer by that that Mr. Hotle can be led, but for the record I make the objection.

Q. (By Mr. Brookes): Mr. Hotle, what did you understand your instructions to be in the event that



(Deposition of H. L. Hotle.)

prior to the end of 1943 you had received only a check from Tiara for \$77,000?

A. My instructions were to close the transaction if I had the money. That was the trouble, I didn't have the money.

Q. But had you received only the sum of \$77,000 before the end of the year and the balance not been forthcoming, did you understand that you had any instructions which compelled you to act?

Mr. Marcussen: Just a moment, please, Mr. Hotle. I have an objection that it is an hypothetical question and not based upon facts in the record. The facts show, in other words, a check for \$330,000.

Mr. Brookes: Counsel, I know that——

Mr. Marcussen: And for \$15,000.

Mr. Brookes: I am trying to get from Mr. Hotle as complete as possible a statement of his understanding of his instructions, and I am trying to meet the government's suggestion that he—which apparently is its case—there may have been some secret instructions inconsistent with the written escrow instructions.

Mr. Marcussen: Well, I am not prepared to say now in a review of all the evidence whether that would be revealed or not. I can say I haven't had that in mind up to this time. I do feel this way: The documents that are in evidence speak for themselves. Mr. Hotle has testified that these were his instructions and they operated under these instructions, and I feel your questions now are asking him, in effect, for an opinion.

(Deposition of H. L. Hotle.)

Mr. Brookes: Do I understand, counsel, that you stated that Mr. Hotle has testified that these documents were his complete instructions and that is your understanding of this last testimony?

Mr. Marcussen: That is my understanding of his testimony. That is the way you intended to be understood?

The Witness: That is right. I operated and completed the deal under those instructions.

Mr. Brookes: Then I will not press my question.

The Witness: No other.

Mr. Brookes: I will withdraw my last question.

Q. Mr. Hotle, had you loaned money to Mr. Particelli over any period of time prior to this transaction?      A. Yes. [13]

Q. Do you recall approximately how long a period before this transaction?

A. No, I couldn't say exactly how long. It had been over a period of several years we had loaned him money, oh, in various forms, real estate loans, unsecured loans, prior to— You are speaking prior to this sale?

Q. Yes.      A. Yes, that is correct.

Q. Had the bank investigated Mr. Particelli prior to making its loans to him?

A. We had known Mr. Particelli for many years.

Q. Had you had prior business transactions?

A. Yes.

Q. Do you, Mr. Hotle— I will withdraw those words. Did you, Mr. Hotle, at the time of making

(Deposition of H. L. Hotle.)

the loans know Mr. Particelli's reputation in the community?      A. We thought we did.

Q. You stated, I believe, that you made among other types of loans, unsecured loans to Mr. Particelli, did you not?      A. That is correct.

Q. Would you have made unsecured loans to Mr. Particelli had you not believed that he was a man of good reputation?      A. No.

Q. In your experience, your business experiences with Mr. Particelli, have you had the opportunity of forming an opinion of his veracity?

A. Our relations were always satisfactory.

Q. Did you consider him to have a reputation for being a truthful man?

A. As far as we knew. That was our experience.

Mr. Brookes: That completes my examination of Mr. Hotle, Mr. Marcussen.

#### Examination

Q. (By Mr. Marcussen): Can you tell us more about the unsecured loans, Mr. Hotle; what amounts they were and when they were granted?

A. Well, I can refer to the record, which is probably more accurate than anything I could say. (Witness refers to documents.) If I can get this record in shape—I have here the liability records of Particelli and his relationship with the bank.

Q. May I look over your shoulder at those records?

A. Surely. I don't know where this starts. That is '42. That is '40. That is '38. This is '36. We go

(Deposition of H. L. Hotle.)

back, '40, '42, '43 to '46. In other words, going back to November of 1936. You will note, in other words, that the records caught that. We made certain unsecured loans in that year. Do you want me to bring out the figures? I will. That is up to you.

Mr. Brookes: I have no—Mr. Marcussen, you are examining Mr. Hotle at this point. Do you want those amounts brought out?

The Witness: This is simply the words—

Q. (By Mr. Marcussen): Yes, you might state the dates and what the amounts were.

A. We made him an unsecured loan, December of '36; another one—

Q. What was the amount?

A. \$400. Pardon me. Another one March of '37 of \$400; [15] another one August 3rd of '37 for \$400, and April 12th, '38, a thousand dollars; July 11, \$1,000—

Mr. Brookes: Excuse me, July 11, 1938?

The Witness: 1938, pardon me. This doesn't say whether it is unsecured. It is installments. I am assuming it is under those conditions. November 24th, \$1300; another one in February of '35, \$400. We made an FHA loan—that should be an "A" instead of "S"—April 1st of '35 of \$600. That is a secured government guaranteed loan. In June 15th, '36, unsecured of \$400; and September 16th, '36, unsecured of \$400; on—

Q. (By Mr. Marcussen): By the way, may I ask, are these dates being given in any particular order?

(Deposition of H. L. Hotle.)

A. Well, they are on this sheet. Now, we go from '36, evidently, to '38. We would—November 3, '38—'42—

Q. Well, I think the earliest loan you gave is this one of \$1300 in 1934.

A. Wait a minute. Turn that over. What is this? Oh, yes, that's right. I reversed it. It should have been the other way.

Mr. Brookes: Yes.

The Witness: I got one page before the other.

Q. (By Mr. Marcussen): In other words, the loans testified to heretofore have been about entries made on one sheet? A. That is correct.

Q. Both sides of the sheet? A. Yes.

Q. And they have— You have read all of the loans on that sheet, but they have been out of order? [16]

A. They have been out of order, that is correct.

Q. Are there any other loans but unsecured loans on that sheet?

A. Nothing. You can see, aside from FHA, that would be it.

Q. Now, referring to that sheet again, to the loans appearing thereon—Well, I think I will ask no further questions about that. I believe I'd like to have you show me what other records you have showing unsecured loans at later dates, between the dates you have next and 1943.

A. Well, I have those here.

Q. Just show those to me. I think what I would like to do is offer these in evidence.



(Deposition of H. L. Hotle.)

A. All right.

Q. That is the best way of getting the whole picture.

A. Off the record?

Q. No, on the record. Well, we will go off the record.

(Off the record.)

Mr. Marcussen: On the record.

Q. Mr. Hotle, you have handed me five sheets—

A. Liability rate ledger.

Q. —from the liability ledger—

A. Of G. Particelli.

Q. —of G. Particelli. There are entries on both sides of those sheets. The top side is identified with the letter “A” and the back side with a letter “B”. And when you testified concerning unsecured loans you were referring to those sheets, were you not?

A. That is correct.

Q. Now, I would like to have you— Strike that, please. The type— This is the exhibit loan ledger on the commercial [17] account?

A. That is correct.

Q. Now, in the early days, at least until '34, until some identified time later, you had, as I understand it, three companies in the business of making loans?

A. That is correct.

Q. The loans referred to on the sheets—these five sheets which you have identified—were those made by the Commercial Bank?

A. Up until '39, I believe.

Q. Up until '39. What were the other institutions that were related to the Commercial Bank?

(Deposition of H. L. Hotle.)

A. Analy Savings Bank and the Sebastopol National Securities Company.

Q. What was the name of the Bank itself?

A. Sebastopol National Bank up until '39.

Q. What happened in '39?

A. The banks were all merged together into a state bank called Bank of Sonoma County.

Q. And these five yellow sheets which I have referred to as the liability ledger is pertaining to the liability to the bank of G. Particelli over a period of years?

A. Exclusive of the liability ledger of the Savings Bank at that period of time.

Q. Yes. Now, these sheets, however, continue on showing loans on until 1944 and 1945?

A. That is correct.

Q. Insofar as they reflect the loans for '44 and '45 do they include any other loans made by the other two companies?      A. No.

Q. They do not. Even after the merger of the three institutions the loan records of each one were kept separately, [18] is that correct? At least, up through 1944?

A. No, no, that is not correct. After '39 the records were merged. We'd have one liability ledger in the bank at the present time which would consist of all loans of any department.

Q. That is a master control record on any customer?      A. That is correct.

Q. But, in other words, even after the merger of the banks you continued to keep separate detail

(Deposition of H. L. Hotle.)

loan ledgers, is that correct?

A. We kept no other record except this except on the notes themselves. In other words, this is the master control record. It still was before we merged the banks, but we had to keep two separate ones. After we merged the banks we only kept one. That is why you find the blue sheet, because it was the Savings Bank at the time it existed.

Q. Well, I call attention to the fact—

A. Exclusive of the Securities Company. It has no connection with these records whatsoever. It is a separate institution, has always been, and has no relationship as far as credits are concerned, with the bank.

Q. When did the merger between the Commercial and Savings occur?

A. I believe '39.

Q. Can you identify the date for us?

A. I can tell you. I can come awfully close.

Q. Specifically.

A. (Witness consults document.) No, February 1940. Beginning March 1, 1940 the three banks were merged by the announcement here. [19]

Q. Now, then, refer again to these five yellow sheets which I have described. I note they contain loan entries and payment entries beginning with November 20, 1934, and continuing until July 20, 1949. Now, will you please tell me what if any difference— Strike that, please. Now, you have handed to me one single liability ledger showing the

(Deposition of H. L. Hotle.)

—on a blue paper—showing the liability of G. Particelli to—

A. Analy Savings Bank.

Q. —Analy Savings Bank. A. A-n-a-l-y.

Q. That shows loan and payment entries beginning September 3, 1937, and extending—

A. August 22, '41.

Q. By the way, how do you account for this entry in the middle there of August 23, 1942 at the top of the page?

A. Typographical error on the part of the book-keeper, I am assuming.

Q. It is your opinion that should be '40?

A. That is right.

Q. Now, can you explain with respect to the commercial accounts which are on the yellow sheets what entries were made up until March 1, 1940 on the loan liability account of G. Particelli here, and explain the difference between those entries, if any, and the entries made in his loan account thereafter?

A. Well, the only difference would be that they were kept on separate sheets up until that time, and the total liability ledger of the two sheets would have indicated his total liability to the bank on any specific date.

Q. I see. Well, then, the liability shown on the yellow sheets which represent the commercial account are still only the loans made through the commercial department, are they not, [20] after the merger took place March 1, 1940?

(Deposition of H. L. Hotle.)

A. (Witness consults document.)

Q. In other words, what I am getting at—

A. I know what you are getting at. I am trying to reconcile this.

Q. I think at one time I understood you to say after March 1, 1940 the yellow sheet was the master file and contained the total of all the loans, and so on, through the commercial or savings account. At another time I understood you to say even after the merger separate records were kept, and these sheets, represented by yellow sheets for the commercial and a blue sheet for the savings account, are those separate records.

A. Well, that doesn't tie in because this saving sheet indicates on August 22, '41 he owed \$8209.84, and following that—this is August 22nd; this is August 11th—he owed \$14,913.90 on the yellow sheet. This is loan 13736 on the blue, and it does not indicate—

Q. Well, that merely refers to an interest payment of seventy-seven fifty. That date doesn't refer to the balance.

A. That is right, no balance paid off there, in September, '41. It does not indicate that those were included—this balance was included in the other sheet. But I don't seem to have a record which indicates how this \$8209 was paid off on this sheet.

Q. Would there be other blue sheets?

A. Well, it is possible.

Q. Forwarded to the savings account of 1941?

A. If the— There should have been \$8209.84



(Deposition of H. L. Hotle.)

which would have been transferred which does not seem to indicate what was done.

Q. I was wondering whether it would be helpful to ascertain.

A. Let's see if Carlisle can find anything else here.

(Off the record.)

Q. (By Mr. Marcussen): Mr. Hotle, we have had a further conversation about these records, which conversation has been off the record, and you have identified two of the yellow sheets which consist of the liability ledger of G. Particelli to the bank——

A. Sebastopol National.

Q. ——Sebastopol National Bank, showing entries beginning November 20, 1943, to and inclusive February 13, 1940, at which date there was an outstanding balance due from Mr. Particelli of \$1,545. Can you state what was done with that balance?

A. That balance was transferred over to the Anly Savings Bank at the time of the merger of the two banks.

Q. Is that the amount that appears here under deposit on the blue sheets?

A. That is correct.

Q. Blue sheet liability ledger of G. Particelli in the Savings Bank?      A. At that time.

Q. I understand, then, from what you have just testified that the accounts of the Commercial Bank were taken over by the Savings Bank?

A. That is correct.

(Deposition of H. L. Hotle.)

Q. Then, referring to the same blue sheet, I call your attention to the fact the last entry—rather, the last balance shown is a balance in the \$8209.84 under date of August 22, 1941, [22] and I ask you to state, please, what happened to that balance?

A. That balance was transferred, then, over to our liability record on the yellow sheets which were the ones we then were using in the bank, and any savings had been transferred to the Bank Sonoma County. All of our sheets from then on were on the yellow sheets.

Q. You have handed to me three sheets of the original five yellow ones that we have talked about here today, and are those the records of the new bank, that is, the merged bank, or will you please say what they are?

A. Those are the liability ledger records of the Bank of Sonoma County after the merger had taken place.

Q. In other words, the savings bank you had previously absorbed the commercial bank?

A. Yes.

Q. And now was in turn absorbed by another bank, the Bank of Sonoma County?

A. That is right.

Q. Which had both a savings and commercial department?

A. That is right. I might make that a little clearer. It was not an actual merger of a bank. It was simply the changing of the name Analy Savings Bank after we merged all the assets of the

(Deposition of H. L. Hotle.)

other organization—changing that name to the Bank of Sonoma County.

Q. I call your attention to the fact the first two of the three sheets which you have most recently handed me bear the name at the foot of each page “Sebastopol National Bank” and the third of those sheets bears the name “Bank of Sonoma County”.

A. The reason simply is we still had those sheets and we used them up. [23]

Q. I think that identifies our records. Now, I would like to ask you a few questions about the symbols on these records.

Mr. Brookes: Don’t you want to introduce them before you do that?

Mr. Marcussen: I might do that. I will offer them in evidence at this time as Respondent’s exhibit next in order, which I think is AA.

Mr. Brookes: No objection.

(Off the record.)

Q. (By Mr. Marcussen): The first column is the column for the date of the particular transaction identified? A. That is right.

Q. The second column bears the title “Reference”. I will ask you to state what that refers to.

A. The number we place on each note to identify it in our work. That number continues on down as payments are made or the loan is paid off.

Q. Do those numbers, different numbers that appear on those columns in all of the sheets we have been referring to—do they refer to specific loans?

A. That is correct.

(Deposition of H. L. Hotle.)

Q. That is, I note here an item on the first of these sheets toward the foot of the page 9,680. That is a loan, a particular loan bearing that particular number?

A. That is correct, and wherever you see the same numbers again later on it is the same note.

Q. Same note and loan transaction?

A. That is right.

Q. Then, the next column bears—top of the column—bears “Maturity Date”. It is self-explanatory. Next is “Interest Paid to”, and then there are particular dates indicated. Then [24] the next column is for “Interest Payments”, and the next column is headed “Type of Loan”. I notice there are different symbols used under that heading. Will you please explain? What is the first?

A. “FHA” would indicate Federal Housing loan.

Q. I note that it actually is “FHS”. I think you explained that a moment ago.

A. A typographical error.

Q. “Secured loan”.

A. Up to ten per cent by the United States Government.

Q. Then “u-n-s-e-c”.

A. That is an unsecured loan, secured by no collateral.

Q. The next symbol I note is “r-e”.

A. That means a real estate loan, secured by a deed of trust.

Mr. Marcussen: I beg your pardon?

(Deposition of H. L. Hotle.)

Mr. Brookes: Isn't that a symbol?

The Witness: Merely a designation of that transfer.

Mr. Brookes: I thought it was a symbol when I saw it before.

Q. (By Mr. Marcussen): The next symbol I note is "o-c".

A. Other collateral. That is other than real estate.

Q. Then next I notice the symbols "u-n-s-e-c" with a percentage, figure of five per cent or six per cent behind. I take it that simply is the rate of interest.

A. That is the rate of interest.

Q. Now, the next heading on the form is entitled "Principal" and is divided into two sub-headings. One—the first of which is "Debit" and the second "Credit". I take it [25] "debits" are the new loans granted?

A. That is right.

Q. And the "credits" are the payments?

A. That is correct.

Q. Then the last column is the "Balance"?

A. That is correct.

Q. And is it possible to determine at any one time— Strike that, please. Is it possible to determine what the composition of any particular balance is on any particular day?

A. Not without looking at the individual note itself. That record pertains purely to the total liability of the borrower so we can keep track of it. If we want to determine the individual note we go to the note ledger and pick out that particular note and indicate the balance.



(Deposition of H. L. Hotle.)

Q. The balance indicates the total due on all of the various notes?

A. As of any specific date.

Q. As of any specific date. Can it be ascertained from these sheets which we have before us, which Respondent has introduced in evidence in this proceeding, what part of any balance pertains to any specific loan; that is, whether it is unsecured or a real estate loan?

A. Yes, it is possible. It would be a terrific amount of detail to do it. We don't use it for that purpose.

Q. Yes. Now, from time to time— Strike that, please. On what basis or— Yes, I think that is a good characterization. On what basis did you make unsecured loans to Mr. Particelli?

A. The basis of the financial statement.

Q. Submitted to the bank from time to time?

A. That is correct, plus our own knowledge of his operations.

Q. In other words, I understand your testimony to be that the unsecured loans were made on the basis of the property holdings and net worth?

A. That is right.

Q. Now, I hand you a file which was received by representatives of the Bureau of Internal Revenue under subpoena from the bank, and ask you to state what that file is.

(File handed to witness by Mr. Marcussen.)

A. It is a list of the financial statements we obtained from Mr. Particelli over a period of years.

(Deposition of H. L. Hotle.)

Q. Yes. I note, by the way, that has been identified in the record already as Respondent's Exhibit O for Identification. Now, can you tell me how those statements were made up?

A. Just what do you mean by that?

Q. That is, where did you get your information concerning the items that go to make up the liability and assets appearing on these net worth statements?

A. From Mr. Particelli.

Q. And from time to time did the bank check into those statements and verify them?

A. No, not in the sense that we made a check. We had confidence in Particelli. We operated on the basis of a long period of time. We assumed, in other words, that these statements were reasonably correct. We don't in a financial statement depend on the appraisal and value of real estate. For instance, we discount or add to, as the case may be, on the basis of our knowledge of the man. [27]

Q. Yes.

A. We have many statements which may be very misleading, you know, so far as assets. We are chiefly interested in the liability. If we have a knowledge of a piece of property, a man may put it in for a hundred thousand dollars. We may discount it to fifty or increase that on the basis of our own knowledge. We don't divulge it to him. We don't particularly care as long as we know the assets reflect a proper position. After all, the value of a piece of real estate could be fifty things to fifty different people. We have got to use our own knowl-

(Deposition of H. L. Hotle.)

edge on that. We don't question a man when he gives us a figure. It doesn't do anything but create ill will. We have a knowledge of what we are doing; therefore, we use our own basis.

Q. Well, you do confirm in a general way that he owns this particular property?

A. That is correct, surely. In other words, if we were dealing with a man who had just come in to us, a stranger, we naturally would have a complete check before loaning money to him. If we have been dealing with a man for ten or fifteen years, naturally we have pretty complete knowledge of his over-all operation. We know he owns certain property.

Q. And you would be satisfied?

A. We'd be satisfied with his financial statement.

Q. And you would know approximately what allowances to make up or down for the valuation appearing thereon?

A. That would be correct in our judgment.

Q. But the valuation appearing on those net worth statements [28] are the valuation given to you by the loan applicant?

A. I think that is true, although I wouldn't say that would be a hundred per cent true simply because we attempt to keep our appraisals of real property particularly at a very conservative level. We say to a man when we are making a loan, "What do you think your property is worth? Let's cut it down. Let's talk about not what you can sell it for today or tomorrow, but under any reasonably

(Deposition of H. L. Hotle.)

adverse conditions." We are trying to get a statement which will reflect properly his assets, his position at any given time, but we are not buying it or selling it, and we tell him that at the time. We try to prevent him from boosting it clear to the skies simply because the real estate market is active today or tomorrow, because that isn't what we are trying to obtain. We are trying to obtain the fact that if we loan money, under any reasonable circumstance he has the amount to pay off and the amount to secure it. The financial statement doesn't always reflect what the man himself thinks he can sell the property for.

Q. So far as real estate is concerned.

A. We try to discourage that.

Q. Take a conservative valuation?

A. That is correct.

Q. When you discuss valuations you make out this net worth statement?

A. That is right. It is simply for our information and no one else. Naturally we are trying to get a conservative picture.

Q. Do you have any other file pertaining to Mr. Particelli showing any notations of the bank which would in any way modify [29] these net worth statements? A. I don't believe so.

Q. Now, with respect to inventories, what do you do with respect to working out the valuation of inventories?

A. Well, we don't have any set formula. Again it depends upon who we are dealing with. If it is

(Deposition of H. L. Hotle.)

someone we think there is a possibility of dishonesty in we would attempt to make a thorough check of the existence of that particular inventory. If, on the other hand, we had confidence in an individual, had done business for many years, we will take his word for it that he has so many, for instance, gallons of wine or whatever it is based upon. The fact is, we generally look the plant over, see the cooperage is all filled. We haven't any course of—basis of measuring the amount of wine in this particular case, but we are reasonably assured that the facts as he has given them are reasonably correct, and we are willing to assume the responsibility on that basis.

Q. All right. Entirely apart from the existence of the inventory, what check do you make with respect to the valuation?

A. We set our own valuation.

Q. In other words, if the loan applicant— Strike that, please. You set your own valuations. Do you examine into market conditions at that time?

A. Surely.

Q. In that particular industry?

A. That is correct.

Q. In this case do you recall whether or not you had differences with Mr. Particelli as to the valuations of the inventories?

A. No. You see, in the first place, to make myself clear, [30] we did not take a chattel mortgage on the wine as such. We took a blanket chattel mortgage and deed of trust on that \$70,000. As far as



(Deposition of H. L. Hotle.)

we were concerned we had one note, although, of course, we—legally we had two, and it was secured; in other words by an over-all—

Q. I'd prefer you wouldn't go into those notes because I haven't laid a foundation for asking you about them at the present time.

A. What I was trying to make clear, you brought up the matter of inventory. As far as the bank was concerned when we made that loan we made it on the over-all picture, the whole thing. If wine was weak in one case or strong in another we made it up the other way. That is why the blanket loan. Therefore, our security was the total assets. If we had been long specifically on wine, of course, we'd have been probably more careful with our check.

Q. Now, recalling again, you don't recall ever having had any differences with Mr. Particelli as to the valuation to be placed upon his wine inventory?

A. No.

Q. I want to call your attention particularly to the statement, net worth statement of Mr. Particelli dated July 7, 1943, which is one of the statements contained in Respondent's Exhibit O for Identification, and call your attention to this item of \$84,000 appearing as the value of 105,000 gallons of wine. Do you recall any discussion about that particularly?

A. No, I don't recall any particularly.

Q. Now, then, I notice there is an item for \$12,000 on the second line—for \$12,000, entitled "2 cars wine rolling". What do you understand that to mean? [31]

(Deposition of H. L. Hotle.)

A. Wine rolling in the cars to eastern market, I am assuming.

Q. Under a bill of sale and bill of lading?

A. I imagine so, yes.

Q. And the information, I presume in the ordinary course of business the bank would ascertain that, what the selling price of that wine was, wouldn't it?

A. No, not necessarily. We'd probably ask him what he thought it was worth. In other words, that was strictly a financial statement. When a man shows a very great excess of assets, in other words, we are not too particular as to tie him down to specific things because we know on the overall picture that our loans are perfectly securable.

Q. In other words, you are not going into too much detail as to the valuation he places upon his net worth and his assets.

A. That is right.

Mr. Marcussen: I would like to offer as Respondent's exhibit next in order Respondent's Exhibit O. No, I beg your pardon. Not Respondent's, but Exhibit—Respondent's Exhibit O for Identification.

Mr. Brookes: No objections. Excuse me, off the record.

(Off the record.)

Q. (By Mr. Marcussen): Mr. Hotle, you have handed me two other yellow sheets on entirely different form and somewhat smaller than the yellow sheets composing an exhibit which Respondents

(Deposition of H. L. Hotle.)

have already introduced in evidence. I'd like to have you tell me what they are.

A. Those are extensions of credit we made to Mr. Particelli [32] in the Sebastopol National Securities Company, which is a holding company owned by the Bank of Sonoma County, a separate corporation. We use that corporation for excess loans of credit which we could not make in the bank.

Q. Due to statutory limitations?

A. That is correct. That is our competitive ace in the hole.

Q. Your building and loan association.

A. That is right.

Mr. Marcussen: Off the record.

(Off the record.)

Mr. Marcussen: Back on the record, then. I would like to offer these two sheets as Respondent's exhibit next in order, which, if my memory serves me correctly, would be BB.

Mr. Brookes: No objection.

Q. (By Mr. Marcussen): I'll ask you to state, then, describe these entries on the first of these two sheets; the first entry, October 4, 1943. I don't mean to have you identify them all, the total credits of \$16,500.

A. That represents unsecured loans made apart by the securities company.

Q. There are three different amounts appearing in the column "Charges."

(Deposition of H. L. Hotle.)

A. Those are the charges, and the balance shows the continuing balance.

Q. Under the date indicated?

A. That is correct.

Q. Can you tell me what this second sheet it?

A. The second sheet represents a collateral and real estate loan, \$22,500, which was made at the time these other loans [33] were paid off through the payment—through the issuance of the new loan.

Q. Do I understand it correctly that the unsecured loan of \$16,500 was included in a secured loan of \$22,500?      A. That is correct.

Q. And that transaction occurred November 16, 1943?      A. That is right.

Q. Now, I call you attention to a debit item of \$47,500 appearing under the symbol “r-e”, which I understand is a secured real estate loan, and ask you to state whether my understanding is correct.

A. That is right. That was also secured by a chattel mortgage which isn't indicated there. In other words, we normally put it under real estate even though—In other words, the collateral loan is really side collateral in a sense.

Q. Yes. Then I note that transaction occurred on October 20, 1943. Then I will ask you to state if you can, please, what was the total amount of the loans to Mr. Particelli on or about December 1, 1943?

A. Well, the record would indicate a total—Loans, you mean, of all institutions?

Q. Yes, of all institutions.

A. The record would indicate \$70,000.

(Deposition of H. L. Hotle.)

Q. Yes. You testified these institutions for all practical purposes operated together?

A. That is correct.

Q. And this total of \$70,000 was a secured loan?

A. That is right.

Q. That is composed of this figure \$47,500 appearing on the last yellow sheet of Respondent's Exhibit AA, page A thereof, [34] and the item of \$22,000—\$22,500 appearing on the second of these two smaller yellow sheets, Respondent's Exhibit BB?

A. That is right.

Q. And again, that entire amount was secured not only by real estate but by all of—a pledge of all of the assets of Mr. Particelli as you were aware of them, is that right?

A. That is right.

Q. Calling your attention to Exhibit E-5 attached to the stipulation, Mr. Hotle, and to the last paragraph contained—

A. That isn't the right one, understand that. That is December 21st.

Q. Yes, I understand it. I think we have enough information in the record. We are leaving this in the record for our purposes. I call your attention that it reads: (Reading) "You are authorized to place on the above deed revenue stamps in the sum of \$110." Do you know what valuation that indicates on the real property transferred by stamps in that amount as of that date?

A. Well, a dollar and ten cents a thousand. A hundred thousand dollars, I guess.



(Deposition of H. L. Hotle.)

Mr. Marcussen: That is all.

\* \* \* \* \* [35]

[Endorsed]: Filed June 23, 1950.

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The Tax Court of the United States

Docket Nos. 25439-25440

DEPOSITION OF JOHN DUMBRA AND  
VICTOR J. DUMBRA

called on behalf of the Commissioner of Internal Revenue, taken pursuant to notice, held at the offices of Buchman & Buchman, Esqs., 292 Madison Avenue, New York, N. Y., on Wednesday, June 14, 1950, at 1:45 o'clock p.m. before Maxwell S. Lipton, a Notary Public duly authorized to administer oaths in the State and County of New York.

Appearances: Valentine Brookes, Esq., Attorney for petitioner, Mills Tower, Room 1720, San Francisco 4, California. Leonard Allen Marcussen, Esq., Attorney for Respondent, Bureau of Internal Revenue, 55 New Montgomery Street, San Francisco, California.

Proceedings

Whereupon

JOHN DUMBRA

was called as a witness on behalf of the Respondent and having been first duly sworn by the Notary Public, testified as follows:

(Deposition of John Dumbra.)

Direct Examination

Q. (By Mr. Marcussen): Will you state your full name for the record?

A. John Dumbra.

Q. Your address?

A. 108-18 66th Road, Forest Hills, Long Island.

Q. What is your occupation, Mr. Dumbra?

A. In the wine business.

Q. Who is your employer?                   A. Myself.

Q. You are employed by yourself?

A. Yes.

Q. At the present time?

A. At the present time, yes.

Q. What was your occupation in 1943?

A. Finder for wines; finding sources of supplies in wines.

Q. That is what you mean by a finder, is that correct?                   A. That's correct.

Q. In the course of your employment for Tiara Products [3] Company in 1943 did you have occasion to look for sources of wine in California?

A. Yes.

Mr. Brookes: Mr. Marcussen, this is your witness. I suggest that you avoid such leading questions, so that we won't have the record filled with objections. That was a leading question.

Mr. Marcussen: Yes, it was.

Mr. Brookes: And you haven't even established the employment of him by Tiara.

Mr. Marcussen: I thought I had.

(Deposition of John Dumbra.)

Q. (By Mr. Marcussen): Did you testify that you were employed by Tiara Products Company in 1943? A. Yes, I was.

Q. What was your capacity, again, with them?

A. Finder for sources of supply of wines.

Q. Did you in 1943 go to California in connection with your duties as a finder of wines?

A. Yes.

Q. Do you know Mr. Giulio Particelli, the taxpayer in this case? A. Yes.

Q. Did you have any conversations in the latter part of 1943 with him concerning purchase of wine from him for Tiara [4] Products Company?

A. Yes.

Q. I show you copy of Exhibit A-1, which was introduced in evidence in this proceeding, and call your attention to the fact that that is an agreement of sale between John Dumbra and G. Particelli, and ask you whether you are the John Dumbra referred to in that exhibit (handing to witness)?

A. Yes.

Q. I call your attention to the fact that it is dated December 6, 1943. With that in mind can you place as accurately as possible the date of your first conversation with Mr. Particelli?

A. The date of the conversation, the first conversation with Mr. Particelli, was a day or two before.

Q. A day or two before that?

A. Before that.

Q. In seeking out Mr. Particelli, what did you do?

(Deposition of John Dumbra.)

A. Well, I went to the store in Forestville and I saw his daughter and his son-in-law. He wasn't there at the time. Then about a day later or so I called up towards the late evening and spoke to Mr. Particelli and he came down—I was in Santa Rosa and he came down to Santa Rosa.

Q. In that conversation when you called him, what was said by you and what was said by Mr. Particelli as best you can recollect it? [5]

A. I told him that I was interested in getting some wines, and if he could talk with me about the wines.

Q. What did he say?

A. He said yes. I said to him that I would like to taste the wines.

Q. I am talking now only about the conversation on the telephone.

A. About wines; he said he would be down right after that.

Q. But you did tell him in that conversation on the telephone, did you, that you were interested in acquiring some wine?      A. Yes.

Q. And he said that he would make arrangements to see you?      A. Yes.

Q. What arrangements did you make then?

A. Then he came down to Santa Rosa and we discussed the wines.

Q. That same evening.

A. The same evening. I told him I would like to taste the wines, and he suggested that we go over to the winery to taste them, which we did.

(Deposition of John Dumbra.)

Q. In that conversation did you tell him what quantity of wine you were interested in acquiring?

A. Not at that particular point. We just talked wines, and I wanted to taste the wines, primarily to see if they were all right.

Q. Did you eventually taste the wines?

A. Yes. I tasted the wines at the winery.

Q. When?           A. The next day.

Q. Yes?

A. And the wines were sound; good wines. I asked him if he would give us four cars of wine.

Q. What did he say?

A. He said he couldn't do that because he couldn't make a profit on it. He said he would consider selling all of the wine and the winery all together, because he wanted to get out of business.

Q. What did you say at that point?

A. I asked him how much he wanted.

Q. Excuse me just a minute. I want to know whether you said anything to him with respect to the quantity of wine you would be interested in then. Did you ask him whether you could get any lesser amount?

A. Yes. Well, I tried to get three cars from him, but he wouldn't sell—he told me the same thing, that he couldn't make any profit on it.

Q. Yes? [7]

A. And he said the only way he would sell would be to sell all the wine and the plant.

Q. Incidentally, could you explain why you



(Deposition of John Dumbra.)

asked for four cars at first and then only asked for three cars?

A. I thought if I asked for a smaller amount I might get some wine, and then later on I might get some more wine.

Q. Then you were about to tell us about your discussion about the price for the wine. What conversation was had with respect to that?

A. I asked Mr. Particelli what price would he want for everything, and he told me that he wanted \$350,000. I told him would he considered three-thirty and I would check to see if it would be all right at those figures. He said no, that he only had one price and that was three-fifty.

Q. This is the same day out at the winery when all this occurred?

A. Yes, when we tasted the wine it was all the same day.

Q. What final arrangement did you make with Mr. Particelli then, that day?

A. Then I checked with——

Q. No, what did you tell him that you would do at that time; what did you say to him?

A. That I would advise him whether we would be interested after we checked on it.

Q. What do you mean "after we checked on it"?

A. I checked with my brother on price.

Q. What is your brother's name?

A. Victor.

Q. Are you an expert taster of wines?

(Deposition of John Dumbra.)

A. I am a good taster of wines; I wouldn't say an expert.

Q. Are you competent to judge the quality of wine by tasting it? A. I believe so.

Q. As between poor, good, very good, how would you, on the basis of your taste alone, what conclusion did you come to with respect to the quality of Mr. Particelli's wine?

A. They were very good sound wines.

Q. Did you make any inquiry concerning his reputation, or did you know what his reputation was for producing wines?

A. Yes. We knew through the trade that he produced good wines.

Q. Did you finally call your brother Victor?

A. Yes.

Q. Where was he?

A. In New York here.

Q. To digress a minute, I want to ask you about the winery—what kind of a winery was that; what was its condition?

A. It was a small winery. It didn't have too much equipment. It was more of a, I would say, a storage winery. [9]

Q. Was there any distilling equipment?

A. No, no distilling equipment.

Q. What was the extent of the equipment as you can best recollect it?

A. Well, I would say that the crusher, press, filter, tanks, hoses—

Q. By tanks and hoses, you mean cooperage?

(Deposition of John Dumbra.)

A. Yes. All were in sound shape.

Q. I think you testified that you did call Victor. What did you say to Victor and what did he say to you?

A. I told him the price that Mr. Particelli wanted was \$350,000, and I had tried to get it for \$330,000, but he was stuck on that price. And Victor then said, "If it is necessary, pay the \$350,000. But if you can get it a little lower, try."

Q. Did he first make any inquiry as to the quality of the wines?

A. Yes, and I told him that they were satisfactory quality.

Q. Did you describe the plant in general terms to him?      A. Yes, in general terms.

Q. After your talk with Victor, what did you do?

A. Then I spoke to Mr. Particelli and I told him that we would go along with him on that. He told me to get him at his lawyer's office in San Francisco. [10]

Q. What was that, the following day or the same day, do you recall?

A. I think the same day or so. It might have been the following day.

Q. By the way, you said that all of this took place one or two days before December 6th?

A. Yes.

Q. In view of the statement that you have just made, it couldn't possibly have been one day, could it?

A. No, it was all on the 6th.

(Deposition of John Dumbra.)

Q. Yes. But I mean your first negotiations and attempts to see Mr. Particelli must have occurred two or three days prior to it, then, didn't it?

A. Well, it had. Because I had been to the plant previously and he wasn't there.

Q. Did you then meet Mr. Particelli and his attorney in San Francisco?           A. Yes.

Q. What did you do there and what was said by you and the other parties as you can best recollect it?

A. There wasn't much said except that Mr. Particelli said that he was going to draw up the whole thing together, and the price would be \$350,000.

Q. By the way, at that conference that you had at the winery when he first mentioned the \$350,000, did he have anything [11] else to say as to how he wanted that set up in the event that you entered into a contract?

A. When he said that he couldn't make a profit, I said, "I don't care how you do it, as long as the total price will not exceed the \$350,000, and the gallonage is correct."

Q. I take it that his was the explanation that he gave as to why he wanted to sell the whole thing, but did he say anything as to how he wanted the final contract arrangements drawn up?

A. Well, he did say that he would make the wine one figure and the plant another figure, but it would be a total price. I didn't care about that.

Q. Did he ask you specifically whether it would

(Deposition of John Dumbra.)

be all right to draft it in a manner satisfactory to him?

A. Yes. I said I didn't care as long as the price didn't exceed \$350,000, and if the gallonage was all right.

Q. Did you inform Victor of that in your conversation with Victor on the telephone?

A. Yes.

Q. Did you at any time make a separate agreement for the purchase of the wine at \$77,000, and thereafter ask Mr. Particelli if he would be interested in selling his winery also? A. No.

Q. Did you ever enter into a separate agreement for the purchase of the winery for \$273,000? [12]

Mr. Brookes: I object to the question, Mr. Marcussen. You are asking him to testify to whether or not the papers that were signed in this agreement—that are stipulated in this case as exhibits as having been signed and agreed to, were signed and agreed to. You are asking him for testimony which is inconsistent with the stipulated papers.

Mr. Marcussen: I thought I had laid a foundation for that by my first question, and I am now merely following through on that first question. However, perhaps I can rephrase that.

Mr. Brookes: I suggest you withdraw the question, and that the answer be stricken, and that you rephrase it, Mr. Marcussen. I think if the reporter would read your question back you would find that you have departed from the form of the question which you put to Mr. Dumbra about the \$77,000.



(Deposition of John Dumbra.)

Mr. Marcussen: Mr. Reporter, would you read the first question about \$77,000 separate transaction, and then read the second question to which objection was taken.

(The reporter read the question as follows:

“Q. Did you at any time make a separate agreement for the purchase of the wine at \$77,000, and thereafter ask Mr. Particelli if he would be interested in selling his winery also?”)

Mr. Brookes: May I interrupt to explain, Mr. Marcussen, [13] that to me the key was the word “thereafter,” and to me the question is objectionable because of the absence of the word “thereafter.”

Mr. Marcussen: I understand, I can see that. I will rephrase this question in the same manner.

Q. (By Mr. Marcussen): Did you at any time enter into a separate agreement to purchase Mr. Particelli's inventory of wine at \$77,000, and thereafter enter into a separate agreement to purchase the winery for \$273,000? A. No.

Mr. Marcussen: That's all.

#### Cross Examination

Q. (By Mr. Brookes): Mr. Dumbra, did you have any difficulty in understanding Mr. Particelli in your oral discussions with him?

A. Yes, it was quite difficult to understand him.

Q. Did you find that at times you were not certain of what he was saying? A. Yes.

(Deposition of John Dumbra.)

Q. Did you leave your conversations with him with the impression that some of the statements that he had made to you you had not understood clearly?

A. Well, it was quite difficult to understand him at times. [14]

Q. That is not responsive to my question, Mr. Dumbra. I ask you whether you felt, in the course of your conversation with him, that at times you were not understanding him correctly?

A. Yes.

Q. Did you understand Mr. Particelli to say anything to you about the ceiling price on his wine?

A. No.

Q. You referred in your direct examination to a statement made by Mr. Particelli that he couldn't sell his wine at a profit.

A. Yes.

Q. What did you understand that he meant?

A. That the wine cost him more and he couldn't sell it to me at any price, and then he did say that he wanted to go out of business, and he wanted to sell the whole place, of course that——

Q. Why couldn't he sell it to you at a profit?

A. I didn't ask him that. What I did ask him is that I would pay him whatever price he wanted, and he said he couldn't sell it to me at a profit.

Q. What did you understand that he meant as his reason for not being able to sell it to you at a profit?

A. I imagine he meant the ceiling prevailing at the time. [15]

Q. Did you know what the ceilings were?

(Deposition of John Dumbra.)

A. I didn't ask him, because if he sold it to me at the ceiling, I would buy it.

Q. Did you understand that Mr. Particelli had the ceiling price in mind when he was telling you the price at which he was limited at selling his wine?

A. I think so.

Q. In your description of the events leading up to the agreement dated December 6th between yourself and Mr. Particelli, you said that you wanted to check the wine?

A. Yes.

Q. And I believe you testified that you went to the winery with Mr. Particelli?

A. Yes.

Q. And you testified that you tasted it?

A. Yes.

Q. Did you do anything else that day to check the wine?

A. I tasted all the wine, spot checked through the plant with him, tasted the wine and found it to be good.

Q. Were you interested in how much wine was there?

A. Definitely.

Q. Did you check that?

A. Well, it wasn't necessary to check it because he had a government controlled form on the gallonage, and that would have to coincide with their reports. [16]

Q. Did you check the reports and the government form before December 6th?

A. I didn't check the government report. I took his word for that because I don't think he would

(Deposition of John Dumbra.)

tell me anything against that.

Q. You felt that you could rely on his word as to the quantity of wine that he had?      A. Yes.

Q. Why was that, Mr. Dumbra; had you checked his reputation?

A. He seemed to have a good reputation in the trade.

Mr. Brookes: No further questions.

### Redirect Examination

Q. (By Mr. Marcussen): When you said he seemed to have a good reputation in the trade, are you referring to his capacity as a wine maker or to his reputation for truth and veracity?

A. For his wine making and a few people that had talked, the few people who had talked of him said that he was, you could depend on his word.

Q. But with respect to this particular inquiry about the gallonage you, as I understand your testimony, were willing to take his word for the gallonage because there were official reports which you could check?

A. Because there were official reports, definitely.

Q. Do you recall whether or not you checked the official reports, or was the agreement made contingent upon submitting copies of those reports?

A. Naturally, it was contingent on the submitting of the reports later.

Q. So that you were taking his word?

A. At the time?

Q. At the time.      A. Yes.

(Deposition of John Dumbra.)

Q. Except with that reservation in mind that it would be subject to check by official reports, is that correct? A. Yes.

Q. When you stated that you would be willing to buy at Mr. Particelli's ceiling, what did you understand his ceiling to be?

A. I didn't say that I will buy at his ceiling. I said that I would buy at whatever price he would sell the wine for.

Q. Yes. But I think you also testified that you would be glad to buy it at his ceiling?

A. I would be glad to buy at his ceiling.

Q. What did you understand the ceiling to be?

A. We didn't get to his ceiling price because of the fact that he didn't want to sell the wine.

Q. I see. But you did understand him to say that he was unwilling to sell his wine alone because he couldn't make [18] a profit on the sale of the wine?

A. Yes.

Mr. Brookes: I object to the question, Mr. Marcussen. This is your witness, and that is obviously a leading question. The witness has testified, and I think that his testimony is what the Judge will be interested in and not Mr. Marcussen's testimony.

Mr. Marcussen: That is undoubtedly true. I think, however, that the question is proper in view of the cross examination, so I will let it stand.

Mr. Brookes: That is entirely without the scope of the cross examination, Mr. Marcussen. It is a restatement in your own words of what you conceive to be certain things that the witness testified



(Deposition of John Dumbra.)

to on direct examination, and I will press my objection in my briefs unless you wish to withdraw it.

Mr. Marcussen: No, I won't withdraw the question. We will have to leave it, I think, for a ruling by the Court.

Q. (By Mr. Marcussen): I think you testified on cross examination that you had some difficulty at times in understanding Mr. Particelli?

A. Yes.

Q. When you had those difficulties did you make any attempt to see to it that you did correctly understand him? [19]

A. Yes.

Q. As you went along in your conversations?

A. Yes.

Q. Did you make any further statement to Mr. Particelli in respect to his wines, about an analysis?

A. Yes, I said we would have to take an analysis of all the wines later on.

Q. Did you make arrangements for that analysis?

A. Yes.

Mr. Marcussen: That's all.

### Recross Examination

Q. (By Mr. Brookes): Mr. Dumbra, I hand you Exhibit No. 1-A, which the parties stipulated as an accurate copy of an agreement signed by yourself as buyer and Mr. Particelli the seller, and the date of that document is December 6, 1943 (handing to witness). At the time that you signed that agreement of sale, the original of the exhibit A-1, had you examined the government reports for any other con-

(Deposition of John Dumbra.)

firmatory data showing the gallonage of wines that was stored at the Lucca Winery?

A. I believe at the time that was signed we looked at the actual gallonage report.

Q. This was where?

A. At the attorney's office.

Q. In what city? [20]

A. In San Francisco.

Q. Had you had any check other than the government reports made of the wine content of the winery?

A. Well, as I had gone through the winery, I marked down the size tanks on a piece of paper, and took a rough gallonage to see how much was there. And as you go around the tanks, naturally, being in the wine business you tap a tank to see if it is full, spot check.

Q. Was your signing this agreement dependent upon your seeing the government reports?

Mr. Marcussen: If you remember.

Q. If you remember, yes.

A. I don't remember that.

Q. Did you understand that you were free not to sign this agreement of sale if the government reports showed a smaller gallonage of wine?

A. I would have signed that, the agreement.

Q. Any way?

A. Yes, because I had assumed that there might be residue in the tanks——

Mr. Marcussen: Just a moment, I object to that question on the ground that it is purely hypotheti-

(Deposition of John Dumbra.)

cal and not based upon anything in the case. He has testified that he did see those reports at the attorney's office and checked the gallonage before signing the agreement. [21] I don't think it is material to inquire as to what he might have done if he had not seen these reports; and in effect that is your question.

Mr. Brookes: That was my question, counsel, and I think it is material because, as I understand his testimony, he has suggested that he and Mr. Particelli made a certain oral agreement in reliance upon Mr. Particelli's statement prior to the signing of this agreement.

He has further testified on recross examination that he did see the government reports, as he remembers it, prior to signing this agreement. I am trying to find out if Mr. Dumbra felt that he was obligated to sign this agreement even if the government report showed a different quantity of wine present than the amount that was represented to him.

Mr. Marcussen: Then I will object to it on the further ground that it calls for his conclusion, a conclusion of law which this witness is not competent to make.

Mr. Brookes: This witness is certainly competent to make a conclusion as to what he was free and not free to do.

Mr. Marcussen: I must let the objection stand.

The Witness: I would like to rephrase that, then.

Q. (By Mr. Brookes): [22] Please answer.

(Deposition of John Dumbra.)

A. Answer your question?

Q. Rephrase it as you wish.

A. Yes——

Mr. Marcussen: It being understood that respondent's objection goes to this entire line of questioning.

A. That of course I know that the gallonage necessarily must be exactly as it is reported in the government forms. The thing that I was going to say was this:

That if it was a case of a little shortage of lees or residue, only from the actual count of the total amount, then it wouldn't be too much of a problem. But if it were too far away, it would be another matter.

Q. And my question, Mr. Dumbra, then, is: If it was, as you put it, too far away from the gallonage that Mr. Particelli had represented to you, would you have signed this agreement?

Mr. Marcussen: I object to that on the same ground.

Mr. Brookes: Your objection has been made, and it relates to this question.

Mr. Marcussen: That it has nothing to do with this case, that the procedure was not followed, and it is entirely immaterial to inquire as to what he would have felt free to do if the facts had been otherwise than they have actually been developed here. And further on the ground that the witness has testified that he had spot checked [23] those tanks and ascertained that the gallonage represented

(Deposition of John Dumbra.)

on the tanks was there. That's the basis of the government's objection.

Q. (By Mr. Brookes): Now will you answer the question, Mr. Dumbra?

Mr. Marcussen: If you don't recall the question, would you like to have it re-read?

The Witness: Yes, I would.

(The previous question was repeated by the reporter.)

A. No.

Mr. Brookes: That's all.

#### Redirect Examination

Q. (By Mr. Marcussen): Do I understand you, by your testimony just concluded on recross examination, to say that you would not have signed an agreement for the purchase of 276,000 gallons of wine, and the payment for such gallonage if that gallonage wasn't there; is that what you meant when you answered the question, yes you would have been free; or is that what you meant by your testimony?

A. If it was too far away I wouldn't have signed it.

Q. In any event would you have contracted to buy any more wine than you knew he could deliver?

A. I don't quite follow that.

Q. In any event, would you have promised to pay him on [24] behalf of Tiara or yourself or however this transaction was handled, for 276,000, or 275,000 gallons of wine, say, if there were only 250,000 gallons there, and you knew that to be a



(Deposition of John Dumbra.)

fact? A. I wouldn't pay for that.

Mr. Marcussen: That's all.

Mr. Brookes: I have no further questions, and we have concluded with Mr. John Dumbra.

(Witness excused.)

Whereupon

VICTOR J. DUMBRA

was called as a witness on behalf of the Respondent, and having been first duly sworn by the Notary Public, testified as follows:

Direct Examination

Q. (By Mr. Marcussen): Will you state your full name, please? A. Victor J. Dumbra.

Q. What is your residence address, please?

A. 110-11 68th Avenue, Forest Hills, Long Island, New York.

Q. What is your business, Mr. Dumbra?

A. I am employed by the San Benito Company, in the wine business.

Q. In 1943 what was your business? [25]

A. I was an employee of Tiara Products Company in the wine business.

Q. What was your capacity?

A. President and manager.

Q. What was the business of Tiara Products Company in 1943?

A. General wine merchants, processors, blenders, producers, bottlers.

Q. Will you describe the operation in a little bit

(Deposition of Victor J. Dumbra.)

more detail at that time?

A. What do you want?

Q. You said you produced some wine. Where did you produce wine?

A. Right here in Manhattan. We would bring in concentrates from the West Coast, produce base materials. We would bring in raw wines, also called unfinished wines. We would bring in tanks of wine and then blend them to our standards.

Q. Were you referring to crushing wine in the first place and crushing the juice?

A. Both, we did some crushing, but not much to talk of in New York City.

Q. To whom did the company sell wine?

A. Mainly to the wholesale trade all over the country.

Q. In what form did you sell it? [26]

A. Bottle goods, primarily, and bulk.

Q. You said something, I think, about blending wine? A. Yes.

Q. Will you describe that process?

A. Yes. We would take in wines of different areas that we considered the proper type for a blending—let's assume for a dry white wine, we would take in a northern wine, probably a New York State wine, and, on another type, we would blend them together to our standards.

When I say "our standards," I mean alcoholic content, color, acidity, and liptical taste, or taste by mouth.

Q. You heard the testimony of your brother

(Deposition of Victor J. Dumbra.)

here, did you, that he was employed as a finder in 1943 by Tiara Products Company?

A. Yes, I did.

Q. Did you give him his assignment to the Pacific Coast to find wine?

A. Yes, sir, I did.

Q. What were your instructions to him in sending him out there?

A. The instructions to him were to go out and find wine. If there were a few cars to buy, he knew the price levels that we would pay. If there were other deals, find out what the deals were, call me and we would then proceed.

Q. Was the company interested at that time in acquiring [27] wineries?

A. Not particularly. We needed wine to continue our operations.

Q. When you say "particularly," did you in 1943 acquire wineries?      A. Yes.

Q. Will you describe how it was that the company came to acquire those wineries?

A. Well, it is a known fact that big blocks of wine were sold either as a stock sale or total sale of company. That was one of the means and methods of getting wine. We did get some wines without having to buy wineries.

Q. Did you ever go out and buy a winery without wine?      A. Oh, no.

Q. In 1943?      A. Oh, no.

Q. In 1943 did you try to buy a winery without wine?      A. No, sir.

(Deposition of Victor J. Dumbra.)

Q. Well then, how was it that you came to buy any winery in 1943?

A. Well, in seeking wines we were offered the wineries with them and then you imagine an evaluation and say, well the plant goes with the wines, and we come out, and that's it.

Q. In other words, is it fair to say that your testimony is the purchase of the wineries were in connection with [28] the purchase of wine alone, is that correct?

A. Well, if you will say that we bought the wineries with the wines, and then had to figure it in our price, I would say yes.

Q. Do you recall having a conversation with your brother John on the telephone about Lucca Winery?

A. Yes.

Q. Will you state your recollection of that conversation?

A. Well, the best of my remembrance or knowledge—

Q. The substance.

A. The substance is this: That here is a winery in the northern part of California, the good red wine producing area with a block of wine in it at a figure. I did some quick figuring and said, "All right, try and get it as low as you possibly can. But if you must make a deal at that price, go ahead, we can handle it."

Q. What price?

A. \$350,000 was the price he told me they asked at that time.

(Deposition of Victor J. Dumbra.)

Q. In authorizing him to purchase at \$350,000 if he had to, what were the factors that entered into your mind in giving that authorization, particularly with respect to the value you placed upon the wine and the winery at the time?

A. I had to know the quantity of wine.

Q. And what else about the wine? [29]

A. We do know this in this industry—

Q. You say quantity?           A. Quantity.

Q. Yes; what else about the wine did you have to know before you would authorize the purchase?

A. Naturally he was told always to check wines. If the wine was sound, then proceed. Check by taste and then have a laboratory analysis made.

Q. I had you a document entitled "Analysis of Wine Samples," and it bears the inscription above that "Lucca Winery, Forestville, California," and ask you to state the values, please (handing to witness).

A. This apparently is a copy of an original analysis made by Berkeley Yeast Laboratories who are independent consultants to the wine trade in California.

Q. Where is the original of that document, do you know?

A. No. I am afraid I can't answer that at the moment. But this looks like a copy of the original without the signature.

Q. Do you know whether or not that was produced in response to a subpoena duces tecum?



(Deposition of Victor J. Dumbra.)

A. Yes, we were asked and these came from our files.

Q. What file was that in, in your office?

A. In the Lucca Winery file, or more exactly, Particelli file. [30]

Mr. Marcussen: I would like to offer that as Respondent's next exhibit in order.

(Discussion off the record.)

Mr. Marcussen: I will offer this as Respondent's Exhibit DD, since I don't know what the next exhibit in order is.

Mr. Brookes: No objection either to the offer or to the designation.

(Whereupon the document referred to was marked Respondent's Exhibit DD in evidence.)

Q. (By Mr. Marcussen): I call your attention to the bottom of the first page of that report under the heading "General Description." It states there: "Dry red wine, heavy in body." Will you describe what is meant by wine heavy in body?

A. Well, wine heavy in body is a fruity, dark colored wine, high in natural tannins and acidity.

Q. Is it a favorable characteristic to have wine heavy in body?

A. Well, a wine heavy in body is good for blending down with lighter types of wines. I don't mean lighter in alcohol, I mean lighter blend or a lighter produced wine, lighter tasting wine. This wine is sold as is without touching it to the Latin trade that like a heavy tasting wine, a full-bodied wine.

(Deposition of Victor J. Dumbra.)

Q. I call your attention to the other descriptions at [31] the bottom of the page here of page 1, and continued on page 2, and ask you to state whether the description there, or what the description there is; how would you rate the wine based upon that description, on its quality?

A. On this analysis?

Q. Yes.

A. I would say that this reflects a good sound wine.

Q. What do you mean by "sound?"

A. Well, I think if you read this, it would tell you more than I could. It is expressive. I would have to use the same words as are on here.

Q. By looking at that again, would you read that as merely good, or would you give it any additional or any lesser rating than good in view of what is stated on that report?

A. I would almost be tempted to say, to use the same words; it is a medium heavy smooth flowery wine.

Q. In spite of all that language, you would just characterize it as good wine?

A. Good wine; that means good wine in any language. Your analysis here distinctly says "moderately full, dry but not acetic."

Q. Being not acetic is——

A. Meaning that there is no volatile acetic acid in there which is connected with vinegar. That we could see from the analysis here. [32]

Q. What does the word "rounding" mean?

(Deposition of Victor J. Dumbra.)

A. The wine doesn't have any rough or sharp edges. It is a smooth, palatable wine.

Q. To the taste?

A. To the taste, correct.

Q. Do you know anything generally about the quality of wines that are produced in the Sonoma Valley where the Lucca Winery is, as I understand it?

A. It is considered a very good area, section for red wines.

Q. Why, do you know?

A. Well, it is a northern country, and dry wine grapes are better grown in those northern, cold climates where the grape has to fight and dig for sustenance rather than get it directly from the sunlight. Most of the vines are on mountains where the soil is rocky. I could go into a long thesis if you want me to go on.

Q. Do you know generally how the quality of the wines produced there—and I am speaking now of standard wines—compares with the quality of wine produced in the Napa Valley?

A. Oh, they are both very good counties, very excellent places for wine. Both very excellent.

Let me clarify that answer with references to table wines. I said wines in general; I should qualify that.

Q. You mean dry wines? [33]

A. Table wines. No, you could have a dry wine and still not be a table wine. A good table wine area.

(Deposition of Victor J. Dumbra.)

Q. Did you testify—I think I asked a question a moment ago—as to what considerations you made and what relative values you placed upon the wine and the winery in a total figure of \$350,000 which you authorized your brother to purchase this wine at, if necessary?

A. Well, quite frankly we didn't place an exact value on the plant. We took more into consideration how much wine was in the plant, and then said, well, mental calculation, it might be worth fifty, sixty thousand dollars for the plant. We wouldn't know the exact value, as far as I was concerned.

Q. Is that the figure that you hoped to get out of the plant?

A. You always hope to get the best figure you possibly can.

Q. When that winery was purchased, did you have any intention at the time of purchase of operating the plant as a winery?

A. We knew that Mr. Particelli had produced wines there; we also knew from the description that my brother gave me of the plant, that it was not a modern, up to date plant. And if you ask me did we intend to operate it, that would be a question that I could only answer six or eight months later when the next season came around. If he saw fit to operate [34] it, logically, we would operate it.

Q. When did the next season begin?

A. That begins in September.

Q. Had you made efforts prior to September to sell that winery?

(Deposition of Victor J. Dumbra.)

A. Yes, some time after May or in June we put it on the market through the Wine Institute Bulletin, and through our attorney, Mr. Mull.

Q. I call your attention to Respondent's Exhibit N in this proceeding, which purports to be a carbon copy of a letter to Tiara Products Company from Mr. Mull, calling your attention to the last paragraph on the first page (handing to witness). I ask you to state whether the figure of \$60,000 there, or thereabouts, is the figure that you attempted to sell the winery at?

A. Well, he states exactly what we conveyed to him, that we would sell for \$60,000 less 5 per cent. Frankly, we had offers for \$40,000 and \$45,000, and we let it go.

Q. Would you have taken any less than \$60,000?

A. We would have taken fifty, fifty-five. We set an asking price on a plant and then you work a deal on it.

Q. Did you finally sell the winery?

A. Yes, we finally sold it.

Q. When was that?

A. The market broke—oh, the latter part of '44, I [35] believe.

Q. What did you get for it? A. \$20,000.

Q. How did you account for the difference in the price you actually got and the price you had previously attempted to sell it at?

A. Poor market for table wine wineries, that's all. Table wine plants, whichever way you want to put it.



(Deposition of Victor J. Dumbra.)

(Discussion off the record.)

Q. When you testified a moment ago that the market broke, what were you referring to, wineries, the market for wineries?

A. Oh, yes, definitely.

Q. Producing dry wines?

A. Well, I later clarified that, if I remember correctly, sweet wine was still at a premium because of the demand for the sweet wines, which is far and above table wines in this country.

Q. What was the ceiling of Tiara Products Company for the sale of wine by the case?

A. To the best of my recollection now, it was beyond \$7 a case of fifths, because we established a good price on wines and took advantage of that ceiling.

Q. Do you know whether you had a high or a low ceiling for that wine?

A. That was considerably high. [36]

Q. How much could the company net on that wine after deducting all of its costs except the cost of the wine itself that it purchased or produced?

A. Deducting taxes and glass and everything from the wine?

Q. Yes.

A. Oh, I judge we would average out about \$2 a gallon.

Q. Then deducting from the \$2 a gallon the per gallon cost of the wine itself, that would give you your net profit, so to speak, per gallon?

A. If you put it directly to that wine. But we

(Deposition of Victor J. Dumbra.)

had a bigger operation than that.

Q. I am not tying this to any particular wine, I am just asking you the question in general to clarify the whole situation there. A. Yes.

Q. From the \$2 net per gallon that you described, is the figure which you arrive at after deducting all costs except the cost of the wine itself, is that correct?

A. Yes, \$2—10 per cent one way or another.

Q. Yes, approximately?

A. Approximately it is \$2, yes.

Q. I think you testified, but I am not certain, that the company also sold wine in bulk?

A. Yes. [37]

Q. What was its ceiling for bulk?

A. Which type do you mean?

Q. Dry wines.

A. There were whites and reds. I think we had established a ceiling of about \$1.40 on white, and I believe from \$1.10 to \$1.25 on reds.

Q. Again I would like to ask you to refer to this transaction which you authorized your brother to enter into for \$350,000 covering both wine and winery, and ask you whether you can state approximately the figure that you considered that you were paying for the wine itself in authorizing that total sum?

A. I will have to ask you how much gallonage was in the winery at the moment; was it 277,000?

Q. 275,000. A. Let's say 275,000.

Q. 275,000 gallons.

(Deposition of Victor J. Dumbra.)

A. Oh, I don't know; \$1, \$1.10 or thereabouts; \$1.12. I don't know. A quick calculation would show that we were paying a little more than \$1 a gallon as far as we were concerned.

Q. I call your attention to Exhibits L and M offered in evidence in this proceeding, in both of which reference is made to 1,000 gallons which were drawn by Mr. Particelli, making a total of 274,000 gallons, which would be the net amount [38] under the contract; and also to the second paragraph on Exhibit N wherein reference is made to a \$1,000 credit in favor of you against a sum of \$1,500 which Tiara owed to Mr. Particelli for services rendered, and I ask you what does that \$1,000 credit refer to (handing to witness)?

A. It is quite apparent from the letter that we were to pay Mr. Particelli \$100 a week to take care of the winery.

Q. I am just asking you about that \$1,000 credit. What was that credit for that you were to get on your debt to Mr. Particelli?

A. That's obvious here; he took 1,000 gallons out, and he allowed us \$1,000 on that 1,000 gallons.

Q. I understand what the exhibits show. But I ask you whether the \$1,000 credit was for that 1,000 gallons of wine that Mr. Particelli withdrew?

A. Oh, yes. Had we paid him the full amount, we would have expected \$1,000 back in cash, definitely.

Q. Did Tiara Products Company ever operate the Lucca Winery, that is in the sense of crushing

(Deposition of Victor J. Dumbra.)

any grapes there, producing any wine?

A. Actually crush grapes, no. But factually we didn't because we then took another winery, a larger winery where we would do our crushing. That was one of the motives in our selling of this plant.

Q. What winery was that? [39]

A. The Cribari Winery.

Q. Where was that?

A. Ladrone and Fresno, California.

Q. When did you purchase that, do you recall?

A. The early part of '44.

Q. The early part of 1944? A. Yes.

(Discussion off the record.)

Q. Mr. Dumbra, I would like to ask you whether wine was in short supply in the year 1943?

A. I would like to say that wine was in great demand. There had been more made that year than in the year previous. So the demand was greater.

Q. I meant this in relation to the existing demand, was it hard to get, in other words?

A. Yes, oh, definitely wines were hard to get.

Q. I presume that the company intended to purchase wine with a view to making a profit on its resale, if possible? A. Oh, definitely.

Q. Were there any other considerations that were made by you as manager of the company in purchasing wine with respect, particularly, to its resale as a part of a general transaction; I am talking now about dry wine and the resale of dry wine as a part of a larger transaction involving the sale

(Deposition of Victor J. Dumbra.)

of other types of wine including sweet wine? [40]

A. Most definitely, always you look to enlarge your scope of trading and to enlarge your clientele. Let's say that all of these transactions were opportunities for us to get further entrenched with our customers.

Q. You mean in what way, becoming further entrenched with your customers for what reason?

A. Well, to get in a more varied type of operation than a localized one.

Q. Was it an advantage to the company merely to be able to sell some of your customers wine; was that one of the things?

A. It certainly was a big advantage to give them wine when they couldn't get it.

Q. At that time was there any inclination on the part of the company to purchase wines on a basis of, if necessary, not even making a profit on that particular resale of that particular wine in connection with a larger sale embracing sweet wines?

A. Possibly. But not factually done in most of our cases. If the market broke on us, and we got caught, well, we were out of luck, that's about all.

Q. Would you have purchased this wine from Mr. Particelli, and the winery, even though you might have known in advance, for example, that you could only have gotten \$20,000 on the resale of the winery?

Mr. Brookes: I object, Mr. Marcussen. You realize [41] that it is an entirely hypothetical ques-



(Deposition of Victor J. Dumbra.)

tion. It is based upon a set of facts that has not been established to exist, or on a state of mind that has not been established to exist.

Mr. Marcussen: I will have to let the question stand in order to reflect the intention of Tiara Products Company—the full intention of Tiara Products Company in entering into this transaction in the first place.

Q. (By Mr. Marcussen): Do you understand the question, Mr. Dumbra?

A. Yes, I do. It is something I can't answer by saying yes or no, frankly. I mean, there are too many factors involved in it. Of course, we assume, at least in my mind I assumed that we would get about \$50,000, \$40,000 possibly, if we would sell the plant. Then if we ran the plant, there is no knowing what we might have made. So it is a question that would be difficult to answer.

Q. I thought I understood your testimony in the earlier part of your examination to be that the company had no intention of operating that winery when you purchased it? A. Well—

Mr. Brookes: Mr. Marcussen, might I interrupt to state that that is not what the record will show that the witness testified to. The record will show that the witness testified that they did not know at the time whether [42] they would have operated it. They would not know unless other conditions came along between the time of the purchase and the time of the next crushing season.

(Deposition of Victor J. Dumbra.)

A. I think you are correct, Mr. Brookes.

Mr. Marcussen: Then I will stand corrected by you and Mr. Brookes.

The Witness: I believe he is right.

Q. In other words, you might have operated it, is that what you mean to say?

A. Well, assuming we hadn't picked up this larger plant, we may have been obliged to run this plant if we saw fit to continue that type of operation. Obviously we didn't need the plant, and as time went on we sold it.

Mr. Marcussen: That's all.

#### Cross Examination

Q. (By Mr. Brookes): Mr. Dumbra, did you testify that you were president and general manager of Tiara Products Company?      A. Yes.

Q. In your capacity as president, were you the officer who signed the income and excess profits tax returns for the company?

A. Possibly not. That might have been left to some officer of the company. But then I may have signed it. So I am not so sure. [43]

Q. You don't remember whether you would or not?      A. No, I do not.

Q. Was the preparation of the income tax returns and the keeping of the corporate records under your supervision as general manager?

A. I am not a bookkeeper, but let me say that I was responsible for anything done with the company's books through our accountants.

(Deposition of Victor J. Dumbra.)

Q. Do you know, Mr. Dumbra, that the effect of having a large inventory on hand at the end of a taxable year is to increase the corporation's, or the taxpayer's taxable income for the year, and thus increase its taxes?

A. Will you repeat that, please?

Q. Do you know that the effect of having a high cost, or large volume of inventory on hand at the end of a taxable year is to increase the income and thus increase the tax?

A. Oh, that's right. It is obvious, yes.

Mr. Marcussen: Respondent objects to that and moves to strike the answer on the ground that the witness has testified that he does not know anything about accounting; and on the further ground that counsel has in effect asked the witness whether he knows something that in effect is not true. A large inventory at the end of the year does not increase the profits of the company. You can't state the proposition that baldly. It is not a complete question. [44]

Mr. Brookes: There may be——

Mr. Marcussen: If the other alternative were—it would certainly increase it if the only other alternative was to place that in as a cost, obviously if it were placed in at the—if the ending inventory were included as the cost for the year, that would increase the profits of the company, that would be true. That is rather obvious. But its removal wouldn't increase the profits without that first

(Deposition of Victor J. Dumbra.)

assumption. I think the question is therefore confusing.

Mr. Brookes: I will withdraw the question and ask it another way.

Mr. Marcussen: I think that would be better.

Mr. Brookes: With respect to your first objection, I think I should point out that I am entitled to find out how much about accounting the witness does know, since the witness has testified that as general manager he was in general supervision of the keeping of the corporate records.

Mr. Marcussen: I don't think he testified to that. I think that as general manager he has testified that he is responsible for everything that goes on in that company, including the proper keeping of the accounts. But not that it was done under his supervision. This man [45] doesn't know anything about accounting.

Mr. Brookes: Mr. Reporter, will you read back my question and the answer of the witness?

(The reporter read the previous question and answer as follows: "Q. Was the preparation of the income tax returns and the keeping of the corporate records under your supervision as general manager?

"A. I am not a bookkeeper, but let me say that I was responsible for anything done with the company's books, through our accounts.")

Mr. Marcussen: That is a far cry, I would say, Mr. Brookes, from stating that the accounts were kept under his supervision, except as he qualified

(Deposition of Victor J. Dumbra.)

it as the general manager.

Mr. Brookes: Mr. Marcussen, that's a distinction which I am unable to follow you on. But you are obviously quite free to draw the distinction yourself.

Mr. Marcussen: We will let respondent's objection to the question stand.

Mr. Brookes: My answer, which I will state for the record, is that I am entitled to find out the extent of this witness's knowledge of the matter for which he was responsible.

Q. (By Mr. Brookes): Mr. Dumbra, have you an understanding of the effect of [46] inventories in the determination of a taxpayer's income?

A. If you will be more specific.

Q. Do you know the difference between an opening inventory and a closing inventory?

A. Yes, definitely.

Q. What is the effect of an opening inventory?

A. Where you have an opening inventory, a closing inventory, which gives you, after you have added the purchases within that year, and the net amount of sales which, I think, are gross sales, then you have your expenses, and you narrow down the profit.

Q. Do you not mean that the opening inventory, the closing inventory and the purchases give you your cost of goods sold?

A. The inventory alone doesn't give you the cost of goods sold, no. Your overhead, your sales cost, incidentals, that would give you cost of goods,



(Deposition of Victor J. Dumbra.)

in my estimation, or rather that is the way I think it is computed.

Q. Did you mean to state that the inventory is a factor in determining the cost of goods sold or in the determination of your gross receipts?

A. What is that again, please?

(The previous question was repeated by the reporter.)

A. Your inventory determines—is part, let me say—inventory is part of the total picture that determines the [47] gross receipts and profit and loss. There can't be any question about that.

Q. Do you know, Mr. Dumbra, what effect on profit and loss the presence of a large inventory at the year-end would have?

A. That depends on what your inventory is priced at, or what it is brought in at, what your first in first out, or last in last out.

Q. Do you know which method Tiara was using in 1943?

A. We continually use one method.

Q. Which one?

A. We compute our cost accurately of merchandise brought in and compute our profit or loss on that basis.

Q. Do you mean that you were using cost as the sole basis of your inventory? A. Yes, sir.

Q. You did not use cost or market, whichever was lower? A. No, sir.

Q. Did you use first in first out or last in last out, do you remember?

(Deposition of Victor J. Dumbra.)

A. We used last in first out.

Q. Do you know what would have been the effect on your profit for 1943 had you purchased in late December, 1943, without selling—I would like to withdraw the question and restate it. [48]

Q. Do you know what the effect on your profits for 1943 would have been had you made a large purchase of inventory in the closing days of December of 1943 without being able to sell any of that inventory in 1943; would that have operated to increase your income for the year 1943 above what it would have been had you not made the purchase, or would it have decreased it?

A. No, I don't think it would affect us at all, because we would bring it in at the price bought, and that would stand on the books at that price.

Q. If the price bought was \$77,000, the price paid is what you mean by price bought, is it not?

A. Yes, sir.

Q. Would you have put the inventory into your records and reflected it in your income, in your tax returns at \$77,000?

Mr. Marcussen: Objection.

A. That is actually what was done. I have since learned that.

Mr. Brookes: Do I understand that you objected, Mr. Marcussen?

Mr. Marcussen: I will withdraw the objection.

Q. (By Mr. Brookes): Had you paid \$274,000 for wine purchased in December of 1943 and put in your inventory, would the value at which you

(Deposition of Victor J. Dumbra.)

put it in the inventory have been \$274,000 or \$275,000? [49]

A. If that were the way be bought it, yes.

Mr. Marcussen: By that do you mean if that were the figure used in the contract?

The Witness: Definitely, that's what it means.

(Discussion off the record.)

Mr. Brookes: Mr. Marcussen, I understand that we have stipulated between us, subject to having the stipulation typed up and formally signed, that the records of Tiara Products Company, Inc.—

Mr. Marcussen: May I interrupt, Mr. Brookes?

Mr. Brookes: Yes.

Mr. Marcussen: I merely meant to suggest that that record show that we have entered into a written stipulation which has not been reduced to final form insofar as typing is concerned, concerning the testimony of Mr. Joe Brown, accountant for Tiara Products Company. And I stipulate—

Mr. Brookes: And the content of the records of the company.

Mr. Marcussen: And the contents of the records of the company. And I stipulate that you may use this rough draft that you now have in your hand in interrogating this witness, and you may, in interrogating him, assume that that is all in the record in this case.

Mr. Brookes: Thank you, Mr. Marcussen. It is so stipulated. [50]

Q. (By Mr. Brookes): Mr. Dumbra, it is stipulated that the corporate records of Tiara Products

(Deposition of Victor J. Dumbra.)

Company reflect a cost of the wine purchased from G. Particelli and his wife of \$77,000 for the wine. It is also stipulated that that is the cost price at which the wine was carried into the closing inventory of 1943, and the opening inventory of 1944 in your income tax and excess profits tax returns.

I understood you to state during the direct examination in response to a question by Mr. Marcussen that in your mental calculations in approving in the telephone conversation with your brother his purchase of the wine and the winery from Mr. Particelli, that, to repeat, in your mental calculations you figured roughly that you were buying the wine from Mr. Particelli at about \$1 a gallon, or \$1.10 a gallon?

A. That's correct; \$1, \$1.10, I said.

Q. But the record also shows that you purchased 275,000 gallons. Can you explain why the corporate records do not show, then, a cost price for this wine of \$275,000 or more?

A. Yes, I think I can.

Q. Will you explain it, please.

A. If we agreed to buy that wine at \$1, \$1.10, that is the figure that would show on our records. But the agreed price of the wine was 27 or 28 cents—I am always hazy of these figures. But that certainly had no bearing, in my estimation, [51] of what I thought the value of the wine was, and what we could get back for it.

Q. Then am I correct in now understanding that when you answered Mr. Marcussen, as you did,

(Deposition of Victor J. Dumbra.)

you intended to convey the thought that you were estimating what the wine would be worth to you in view of your selling price, and your position in the trade in New York?

A. Definitely. Only to our company, and I am not establishing any value of wines. Only to our company, knowing what the return was on a per case or a per gallon basis.

Q. In view of what your records and your income tax returns show, then what is the price which you understand Tiara Products Company paid for the wine?

A. The records absolutely show 28 cents, or 27 cents, whatever is in that agreement.

Q. Do you remember the numbers of thousands of dollars for the entire batch of wine?

A. \$77,000.

Q. Now, Mr. Dumbra, was the wine at the time you bought it from Mr. Particelli fit for immediate use by you in your business?           A. By us, no.

Q. What did you have to do to it?

A. Whatever wines we handle—let me say all wines that me might handle would be blended, processed—when I say “processed” [52] I mean clarified, refrigerated, pasteurized, filtered, and subsequently bottled. So I am saying the processes that a normal wine would go through.

Q. Is that process sometimes called finishing?

A. Yes, sir.

Q. Proceed with your answer, please. Did you



(Deposition of Victor J. Dumbra.)

answer me that you had to do these various processes?

A. For those wines that we bottled up. But not necessarily on the bulk of the wine.

Q. What did you do to the bulk of the wine?

A. Some of it was sold in ten-car lots without processing to other producers, possibly, or bottlers.

Q. Would they have to perform any of these services for the wine before selling it in bottles?

A. That is a question I can't answer. They might and they again didn't have to.

(Discussion off the record.)

Q. Was this wine in what is considered generally to be a marketable condition at the time you bought it?

A. Again that would depend on the firm buying it. As far as we were concerned it was in an unfinished state.

Q. Did you state that you blended this wine that you bought from Mr. Particelli with other wine prior to selling it yourselves?

A. We blended some of it up, yes, sir. [53]

Q. What wines would you use for blending with it?

A. Oh, we might use a little colored wine, we might use a light-bodied wine. That would depend on the wine itself, quite frankly.

Q. What proportion of other wine would you add to the Particelli wine in blending it to make it finished?

A. Again, that would depend on the type we

(Deposition of Victor J. Dumbra.)

are trying to get at. If it were burgundy we would use more of it, which is a heavy wine. If it were going into a claret, we would use less.

Q. What was the variety of the red wine which you purchased from Particelli?

A. I would say, generally speaking, a heavy colored—

Q. Excuse me; I didn't mean that; I meant the variety.

A. We would catalogue them as heavy red wines. You wouldn't say—it is zinfandel mostly.

Mr. Marcussen: Red or white?

The Witness: Oh, no, mostly red.

Q. (By Mr. Brookes): I asked red.

A. And I replied—

Q. Then you said the red was zinfandel?

A. I think mostly zinfandel.

Mr. Brookes: Off the record.

(Discussion off the record.) [54]

Q. (By Mr. Brookes): Mr. Dumbra, you testified that you had certain ceiling prices for the sale of your own product, and you testified generally to what they were. Did those ceiling prices relate to vermouth as well as table wine? A. Yes, sir.

Q. So when you averaged out, as you did, in getting your price, your ceiling was about \$7 a case, you were referring to vermouth among other wines? A. Generally speaking, yes.

Q. Was not your ceiling price for vermouth higher than the ceiling price for wine?

A. Yes, we had a higher ceiling, definitely.

(Deposition of Victor J. Dumbra.)

Q. Was the zinfandel which you purchased from Mr. Particelli suitable for making into vermouth?

A. You could use it.

Q. You use a red wine in making vermouth?

A. You couldn't use a big percentage of it. You might use about five per cent in a batch, and that is negligible. But you do not use red wine in making vermouth. I say it can be used, but you do not use it.

Q. Yes. I suppose if you made it it would resemble dubonnet more than vermouth?

A. That's right, it would be suitable for dubonnet, the type of dubonnet wine. [55]

Q. Do you recall what your ceiling price was on table wine? A. Yes.

Q. What was it?

A. I know we were better than six and a half on reds, and about seven and a half on whites. About seven average.

Q. On table wines? A. Yes, average.

Q. Does that include tax? A. Yes, sir.

Q. When you referred to your bulk ceiling on reds as being \$1.10 a gallon to \$1.25 a gallon, you were referring to red table wines?

A. That's right.

Q. Did that include the tax?

A. No, sir, bulk wines are considered always sold naked, in bond.

Q. Did the OPA apply a different ceiling price to wines which you sold from the Lucca Winery than these that you are referring to?

(Deposition of Victor J. Dumbra.)

Mr. Marcussen: Excuse me, may I have that question repeated?

(The previous question was repeated by the reporter.)

Mr. Brookes: Off the record.

(Discussion off the record.) [56]

Mr. Brookes: Mr. Marcussen, I would like to have you stipulate as follows with respect to this witness's understanding concerning the application of the OPA Rules and Regulations pertaining to the resale by Tiara Products Company of wines purchased by it in connection with transactions whereby Tiara purchases a winery together with its inventory of wine:

Tiara Products Company purchased a number of wineries in California and their inventories of wine. At the time of such purchases it was the understanding of this witness as president and general manager of Tiara Products Company that Tiara Products Company was permitted under the applicable rules and regulations of the OPA to resell the wine thus acquired at its, Tiara Products Company, ceilings for wine both for bulk and for case goods.

Toward the end of 1944 the witness learned that he was partially mistaken in his understanding. He learned that Tiara Products Company would be permitted to use its ceilings upon the resale of wine purchased in the manner just described only in such instances where Tiara Products Company first effectuated a delivery of such wine from the

(Deposition of Victor J. Dumbra.)

purchased winery to the original facilities of Tiara Products Company and delivery to the customer from such facilities.

He learned, for example, that if the sale of wine [57] purchased in the manner described was effected by a direct delivery of such wine from the purchased winery to the customer, that the ceiling applicable to such sales was the ceiling of the purchased winery.

Mr. Marcussen: It is so stipulated.

(Discussion off the record.)

Mr. Brookes: In view of that stipulation into which we have just entered, I conclude my cross examination.

#### Redirect Examination

Q. (By Mr. Marcussen): Mr. Dumbra, will you please state your best recollection of what disposal was made of the wines purchased at the Lucca Winery from Mr. Particelli?

A. Some of the wines went to affiliated wineries, some came east to us for subsequent blending out, and some were sold direct to our customers.

Q. Approximately what percentage was sold direct to other customers?

A. I guess maybe 50 per cent, 40 per cent; I am not too sure.

Q. There was considerable questioning on cross examination with respect to the use of a figure of \$77,000 representing the cost of the wine that was purchased from Mr. Particelli in this transaction.



(Deposition of Victor J. Dumbra.)

When you used the figure of \$77,000 as you testified, was that because you had undertaken, or [58] rather Mr. Dumbra, your brother, John Dumbra had undertaken with Mr. Particelli that the contract could be handled in any manner satisfactory to Mr. Particelli insofar as its wording was concerned?

A. I believe I stated that prior to this question. Any deal that Mr. Mull, our attorney, would pass on would be agreeable to us.

Q. The use of a figure of \$77,000 for the cost of the wine on your books did not reflect, did it, your own opinion of the actual cost of that wine to the Tiara Products Company?

A. Well, actually that was what we paid for the wine plus the purchase price of the winery. But in selling it we didn't—at least I didn't figure that that wine was only worth 28 cents a gallon, or \$77,000.

Q. I am not talking about your selling price, I am talking about purchasing it. What did you figure that you were paying for wine when you entered into this transaction with Mr. Particelli, regardless of the specific terms of this agreement?

A. Let me say that out of the \$350,000 I made a mental reservation of the figure on the plant and the balance on the wine. Whether the figure was fifty, sixty, forty thousand dollars, I don't remember.

Q. You mean for the winery? [59]

A. For the winery.

(Deposition of Victor J. Dumbra.)

Q. And the balance for the wine?

A. That's the way I computed it. Wrongly or rightly, that's the way I computed it.

Q. Is that what you had in mind when you authorized your brother to enter into this transaction on the telephone?      A. Oh, yes.

Q. With respect to the sale of bottled dry wines such as were purchased in bulk from Mr. Particelli in this transaction, what were your ceilings?

A. Our ceilings were on an average of \$7 for our wines; mostly, or possibly \$6.50, the red; \$7.50 for the white wine, within that range.

Q. Was it those ceilings that you had in mind when you testified that you could net approximately \$2 a bottle without figuring in the cost of the wine itself?

A. If you will change that to \$2 a gallon I think you meant gallon.

Q. I beg your pardon, you are correct; \$2 a gallon.      A. Then I would say yes.

Q. Thank you for correcting me. So that the record may be clarified on this subject, I am not quite certain just what it contains with respect to your testimony about your ceilings for the sale of bulk wines.

I think you testified that those ceilings varied [60] from \$1.10 to \$1.25, and I ask you are those the ceilings that you had for the type of wine that was sold in bulk by you represented by purchases from the Lucca Winery, for example?

A. Within that range, yes.

(Deposition of Victor J. Dumbra.)

Q. When you said that you were responsible for the bookkeeping and the accounting for the transactions entered into by Tiara Products Company, in what capacity were you responsible for such matters?

A. Well, as its general manager you might call me responsible for everything that went on in my company, or this company, without having specific knowledge of what the detail work was.

Q. Do you have a complete understanding of accounting and bookkeeping matters, actually?

A. Oh, definitely not.

Q. Again I want to ask you as to whether you sent your brother John out to California with instructions to get a winery prior to the time that this purchase of the Lucca Winery was made?

A. Well, my brother's assignment was broad, as I stated, to find wine. Subsequently wineries came with wine, we bought wineries.

Q. Is it your testimony that you bought this winery because it was necessary to get it in order to get the wine?

A. Well, if we wanted the wine, it is quite obvious we [61] had to buy the plant with it, so we bought the plant.

Mr. Marcussen: That's all.

#### Recross Examination

Q. (By Mr. Brookes): Mr. Dumbra, in view of the important part which you played in the acquisition of the Lucca Wine and Winery, and in view

(Deposition of Victor J. Dumbra.)

of the further fact that you were president and general manager of Tiara Products Company, did you feel that it was your responsibility to be certain that the books of account of the corporation properly reflected the transaction?

A. Oh, yes, at all times I wanted it to reflect exactly what the transaction was.

Q. Mr. Marcussen has attempted to put you in the position of testifying that you recorded fictitious figures on the records of account.

Mr. Marcussen: I am sure I have not attempted to place the witness in any such position, Mr. Brookes.

Mr. Brookes: Well, the record will speak for itself. If you haven't been busy impeaching your own witness, I have never seen a more beautiful example of it. I will withdraw that for the purpose of interrogating the witness. But you will see for yourself what you have done when it is read in front of you.

Mr. Marcussen: There has been certainly no intention; I have had no intention to do anything of the kind. [62]

Q. (By Mr. Brookes): Did you consider that the \$77,000 cost price of the wine that is on the books of account of Tiara Products Company is a fictitious figure?      A. Oh, no, never.

Q. Would you consider that it was the real cost to you of the wine?      A. Definitely.

Q. That is why it was used in the income tax returns as the cost of the wine?

(Deposition of Victor J. Dumbra.)

A. Most assuredly.

Mr. Brookes: That is all.

#### Further Redirect Examination

Q. (By Mr. Marcussen): Did you use it as the cost for the wine because it was the figure appearing in that contract?      A. Definitely.

Q. Is that the reason?

A. That's the reason, the contract read that the price for the wine, and that is what was on the books, and that's the way we reflected it.

Q. And you had an understanding with Mr Particelli that it didn't make any difference how it was handled, and you would handle it under the contract in the manner in which Mr. Particelli wanted it? [63]

A. Let me say that we—I personally didn't have the understanding. We were concerned with how it was set up provided again, as I say, our attorneys saw to it that we had a legal bill of sale.

Q. And didn't you instruct your brother John on the telephone, when he asked you, that it was all right to set this contract up in any form which Mr. Particelli desired provided that it was approved by your attorney?

A. Yes, I think I have stated that before.

Q. That is the substance of your testimony?

A. Oh, yes.

Q. And I ask you again, now—counsel, I think, has attempted to draw an inconsistency in your testimony. I think you testified a moment ago that



(Deposition of Victor J. Dumbra.)

so far as you were concerned you regarded the actual cost of this wine to be approximately \$300,000 for the entire batch, and that the balance of the difference between that and the total figure to be approximately what it was costing you for the winery?

A. I say, that was my mental observation.

Q. Yes.

A. But it didn't reflect that on the books.

Q. You didn't reflect that on the books, and what was the reason you didn't reflect it on the books?

A. The contract is the obvious answer.

Mr. Marcussen: Exactly. [64]

That's all.

Mr. Brookes: I have no further questions.

(Whereupon, at 4:15 o'clock p.m., the hearing in the above-entitled matter was concluded.)

### Certificate

I, Maxwell S. Lipton, the person who took the foregoing depositions, hereby certify:

1. That I proceeded on the 14th day of June, 1950, at the office of Buchman & Buchman, in the City of New York, State of New York, at 1:45 o'clock p.m., under the said order and in the presence of Valentine Brookes, Esq., and Leonard Allen Marcussen, Esq., the counsel for the respective parties, to take the following depositions, viz:

John Dumbra, a witness called on behalf of the respondent;

Victor J. Dumbra, a witness called on behalf of the respondent.

2. That each witness was examined under oath at such time and place, and that the testimony of each witness was taken stenographically and reduced to typewriting by me or under my direction.

3. That Respondent's Exhibit DD was withdrawn by Respondent in accordance with the previous permission granted by the Court.

4. That I have no office connection or business employment with the petitioner or his attorney.

[Seal] /s/ MAXWELL S. LIPTON,  
Notary Public, State of New York, No. 24-2377350.

Qual. in Kings County Cert. filed with Kings and New York Co. Clerks. Commission expires March 30, 1951.

[Endorsed]: Filed July 19, 1950. [66]

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[Endorsed]: No. 13503. United States Court of Appeals for the Ninth Circuit. Giulio Particelli, Petitioner, vs. Commissioner of Internal Revenue, Respondent, and Estate of Eletta Particelli, Deceased, and Arthur Guerrazzi, Executor, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petitions to Review a Decision of The Tax Court of the United States.

Filed: August 22, 1952.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13503

GIULIO PARTICELLI,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent on Review.

ESTATE OF ELETTA PARTICELLI, Deceased,  
ARTHUR GUERRAZZI, Executor,  
Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent on Review.

PETITIONER'S STATEMENT OF POINTS  
AND DESIGNATION OF RECORD

The points on which petitioners intend to rely are as follows:

1. The Tax Court erred in admitting, over petitioners' objections, evidence tending and offered by respondent in order to show petitioners had committed crimes of which neither of them had been convicted. This evidence was not relevant to any issue in the case and was offered solely to impeach the testimony of one of petitioners.

2. The Tax Court erred in admitting, over petitioners' objections, irrelevant evidence prejudicial in character.

3. The Tax Court erred in finding facts which

were based solely on hearsay evidence elicited from an expert witness to establish his qualifications to testify as an expert to wine values. The hearsay evidence was admissible only for the limited purpose of establishing and testing an expert's qualifications, and was incompetent for all other purposes. The Tax Court erred in considering it for other purposes.

4. The Tax Court erred in failing to give effect to testimony identifying and establishing the nature and ordinary selling price of wine withdrawn by petitioners after the sale of their wine and winery.

5. The Tax Court erred in finding that Tiara Products Company sold the winery in December, 1944 for \$20,000.

6. The Tax Court erred in failing to give effect to testimony of respondent's witness, John Dumbra, that he was not certain he was able to understand petitioner Giulio Particelli in his preliminary negotiations with him.

7. The Tax Court erred in finding as a fact that the purchaser of the wine "considered that it was paying from \$1 to \$1.12 per gallon for the wine acquired from petitioner.

8. The Tax Court erred in holding that the terms of the written contract of sale between petitioners and Tiara Products Company could be disregarded by the Commissioner of Internal Revenue, in the face of proof that not only the seller but also the purchaser faithfully performed the terms of that contract.

9. The Tax Court erred in holding that prelimin-

ary negotiations by which neither party to a subsequent written contract was bound superseded the terms of the written contract.

10. The Tax Court erred in holding that a written contract was a sham which the Tax Court and respondent could both disregard where it was entered into freely, without compulsion, by unrelated parties, both of whom observed its terms in their subsequent conduct.

11. The Tax Court erred in assigning a value in excess of the O.P.A. ceiling price to a commodity the price of which was controlled by governmental regulation.

12. The Tax Court erred in allocating a value of \$275,000 to the wine sold by petitioners to Tiara Products Company.

13. The Tax Court erred in finding that "Dumbra did not at any time agree to purchase the wine for \$77,000 and the winery for \$273,000."

Petitioners designate the following portions of the record:

1. The pleadings.
2. The stipulation of facts, with attached exhibits.
3. Stipulation of Facts, II.
4. All the testimony of Giulio Particelli.
5. The following testimony of Philip Branger: that appearing in the in the reporter's transcript at p. 167 through the following: "A. Yes, it was in the early part, I believe it was in December;" on page 170 of the reporter's transcript the following question: "Q. Mr. Branger, what did you pay for the



winery when you purchased it?"; on page 173 of the same the following: "The Witness: \$22,000"; page 174 to the last question on page 176 of the reporter's transcript.

6. All the testimony of Mrs. Arthur Guerrazzi.

7. All the testimony of George Oefinger.

8. All the testimony of A. M. Mull, Jr.

9. The following testimony of Robert Mondavi: that appearing in the reporter's transcript at pages 276, 277, 281-284, the last four lines of page 302, all of pages 303-313, and on page 314 through the close of the cross-examination.

10. The testimony of Fred J. Foster.

11. The testimony of Louis R. Gomberg.

12. The testimony of Glenard Gould.

13. In the deposition of H. L. Hotle, the portion of the direct examination appearing on pages 2, 3, and on page 4 before the following: "Mr. Marcusen: Now, you were just referring——".

14. The deposition of John Dumbra.

15. The deposition of Victor J. Dumbra.

16. Exhibit 10.

17. Exhibit W.

18. The memorandum findings of fact and opinion of the Tax Court, dated February 20, 1952.

19. The decisions of the Tax Court dated May 1, 1952.

20. The petition for review.

21. The notice of filing petition for review.

22. Petitioners' statement of points and designation of record.

23. Any designation of record by respondent.

Dated at San Francisco, California, August 25, 1952.

Respectfully submitted,

/s/ VALENTINE BROOKES,

/s/ ARTHUR H. KENT,

Attorneys for Petitioners

[Endorsed]: Filed Aug. 26, 1952. Paul P. O'Brien,  
Clerk.

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[Title of U. S. Court of Appeals and Cause.]

#### STIPULATION CONCERNING EXHIBITS

The parties hereto stipulate, through their counsel and subject to the approval of the Court, as follows:

1. That all the exhibits contained in the record transmitted by The Tax Court of the United States may be referred to by the parties in the briefs and arguments and may be considered by the Court to the same extent as if included in the printed record; and

2. That in order to avoid excessive printing costs none of the exhibits need be printed, excepting only Exhibits A-1 to I-9, inclusive.

Respectfully submitted,

/s/ VALENTINE BROOKES,

/s/ ARTHUR H. KENT,

Attorneys for Petitioners on Review

/s/ ELLIS N. SLACK,

Acting Assistant Attorney General,

Attorney for Respondent on Review

So Ordered.

/s/ WILLIAM DENMAN,

Chief Judge

/s/ HOMER T. BONE,

Circuit Judge.

/s/ WM. E. ORR,

Circuit Judge.

[Endorsed]: Filed Sept. 19, 1952. Paul P. O'Brien,  
Clerk.

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United States Department of Justice

Washington 25, D. C.

Air Mail—Special Delivery

Sept. 5, 1952

Paul P. O'Brien, Esq.,

Clerk, U. S. Court of Appeals for the Ninth Circuit,

P.O. Box 547, San Francisco 1, California

Re: Giulio Particelli vs. Commissioner of Internal Revenue; Estate of Eletta Particelli, Deceased, Arthur Guerrazzi, Executor, vs. Commissioner of Internal Revenue (No. 13503, C.A. 9th)

Dear Mr. O'Brien:

Reference is made to the petitioners' letter to you dated August 25, 1952, enclosing their Statement of Points to be relied on, and Designation of Portions of the Record proposed—presumably to be printed—in the record upon review, in the above cases, copies of which were sent to and received by the Chief Counsel, Bureau of Internal Revenue this city, on August 27, 1952—instead of this office—

